ROYAL COMMISSION ON THE TEXTILE INDUSTRY

HON. MR. JUSTICE W. F. A. TURGEON
Commissioner

A. S. Whiteley, Secretary

MINUTES

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120th, 121st, 122nd, 123rd, 124th DAYS

ARGUMENT

J. C. McRuer, Esq. K.C.

ROBERT BRYDIE
OFFICIAL REPORTER
TORONTO
CANADA

ROYAL COMMISSION ON THE TEXTILE INDUSTRY

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ROYAL COMMISSION ON THE TEXTILE INDUSTRY

HON. MR. JUSTICE W.F.A. TURGEON,

Commissioner,

A.S. Whiteley, Secretary,

ONE HUNDRED AND TWENTIETH DAY

(MARCH 1st, 1937)

A R G U M E N T

Robert Brydie,
Official Reporter.

ROYAL COMMISSION ON THE TEXTILE INDUSTRY

HON. MR. JUSTICE W.F.A. TURGEON,

Commissioner,

A.S. Whiteley, Secretary,

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Appearances:

J.C. McRuer, K.C. and E. Beauregard, K.C.	Commission Counsel,
R.L. Kellock, K.C.	For Primary Textile Institute.
C.G. Heward, K.C. Aime Geoffrion, K.C. and C.T. Ballantyne,	For Dominion Textile Company.
S.G. Dixon, K.C.	For Courtaulds Limited.
L.A. Forsyth, K.C.	For Canadian Celanese Ltd. and Canadian Silk Products Limited.
A.S. Bruneau, K.C.	For Canadian Cottons,
Thos. Tremblay, K.C. and J.H. Hebert,	For M.E. Binz Co. Lte.
Francois Lajoie, K.C.	For Wabasso Cotton Co.

-- oOo --

Ottawa, Ontario,
Monday, March 1, 1937.

-- The Commission resumed at 10.30 a.m.

ARGUMENT BY MR. KELLOCK, K.C.(Resumed):

My lord, I was referring to my friend's treatment of mill margins --

THE COMMISSIONER: Where is that?

MR. KELLOCK: Commencing at page 49 of his brief, and particularly, my lord, with regard to --

THE COMMISSIONER: That is what he called mill spread.

MR. KELLOCK: Yes, my lord, and particularly to the conclusion which my friend attempts to draw from the discussion at page 51 where he contends that the Canadian manufacturer simply took advantage of the increase in American prices after June of 1933 and the institution of the N.R.A. to get, as my friend puts it, an extra profit.

THE COMMISSIONER: Well, he says you did two things; you increased your prices and decreased your wages.

MR. KELLOCK: Increased the mill spread and decreased the wages. I want to deal with that just for a moment. My submission at the outset is that my friend cannot deduce an absolute comparison betwen mill spreads in the United States and mill spreads in Canada and arrive at a profit in either place,

and that the only effect which one can give -- and I am speaking now of the evidence that I will refer your lordship to -- the only effect or conclusion that one can draw from a comparison of mill spreads is the trend, and unless one can establish the existence of a profit --

THE COMMISSIONER: Pardon me a moment; mill spread -- I do not want to make any mistake -- is the difference between the price of the raw material and the selling price of the article.

MR. McRUER: That is right.

MR. KELLOCK: It has to be takenwith limitations, my lord.

THE COMMISSIONER: Therefore you get your cost of production.

MR. KELLOCK: It has to be taken with limitations.

MR. McRUER: With any tax taken out.

THE COMMISSIONER: I want to know what we are talking about. That is right?

MR. KELLOCK: My friend has his definition at the top of page 50 where he says: "Mill spread is the difference between the cost of the raw cotton after deduction of the waste factor and the selling prices of the finished yarn".

MR. McRUER: Added to that, my lord, should be with any excise tax -- any tax taken out, that is, any tax that does not go to the manufacturer that is taken out of the price because that would not be fair to put that in.

THE COMMISSIONER: That would be less taxes.

MR. McRUER: Less taxes, yes, sales tax or anything of that sort.

THE COMMISSIONER: Sales, excise, processing.

MR. McRUER: Not excise.

THE COMMISSIONER: Sales and process.

MR. HOOPER: Yes, excise tax was taken out. Yes, my lord, excise tax was taken out.

MR. KELLOCK: Canadian excise tax.

THE COMMISSIONER: The excise tax is not charged to the consumer.

MR. McRUER: In this, you see, it was taken out as part of the cost of the raw material.

THE COMMISSIONER: What is that?

MR. McRUER: In this, you see, it was taken out as part of the cost of the raw material; if they paid excise tax on the raw cotton --

THE COMMISSIONER: You do not take it out twice.

MR. McRUER: No.

THE COMMISSIONER: It is like your waste. In addition to waste you would have less excise or other taxes. That includes sales tax?

MR. HOOPER: Sales tax is not in.

MR. McRUER: Sales tax is not in the selling price.

MR. KELLOCK: Your lordship sees the spread includes everything with the exception of raw material costs, including excise tax; in other words, includes labour and overhead, all costs and profit, if any. Then, there is just this consideration to bear in mind, and that is this, that in considering the exhibits

Mr. MORDEN: Land taxes, yes, sales tax or anything of that sort.

[illegible]

Mr. G. TURR: Not excise.

The CHAIRMAN: Sales and excises.

Mr. MORDEN: Yes, excise tax was taken out, I think, excise tax was taken out.

Mr. MILLER: Canadian excise tax.

The CHAIRMAN: The excise tax is not charged to the consumer.

[illegible]

Mr. CHAIRMAN: That is true.

Mr. MORDEN: In fact, you see, it was taken out as part of the cost of the raw material; it was paid excise tax on the raw material --

The CHAIRMAN: You do not take it out twice.

[illegible]

addition to waste you would have land sales or other taxes. That includes sales tax?

Mr. MORDEN: Sales tax is not in.

Mr. MORDEN: Sales tax is not in the sales [illegible] prices.

Mr. MILLER: Your lordship sees the spread includes everything with the exception of raw material costs, including excise tax; in other words, including [illegible] [illegible], you [illegible] [illegible]. If you [illegible], there is just this small difference [illegible] [illegible] and land is 80%. That is about the [illegible]

dealing with mill spread the price of raw cotton at a particular date is taken, and the selling price, and the spread. Now, the price of raw cotton and the selling price is taken on the same day, but the raw cotton which --

THE COMMISSIONER: Not forgetting that raw cotton was taken after deducting waste, excise tax.

MR. KELLOCK: Remembering that, and also this, my lord, that the raw cotton which is taken at a certain price on a certain day is not raw cotton which is sold at the same price on the same day because it has to be fabricated by the mill and is sold subsequently.

THE COMMISSIONER: You are talking of the raw cotton in the finished product?

MR. KELLOCK: Yes.

MR. McRUER: Isn't that precisely what you claim a cotton reserve for?

MR. KELLOCK: Oh, please don't confuse it. All I am pointing out to your lordship is --

THE COMMISSIONER: You mean the cotton you are buying to-day is not the cotton you have in this cloth?

MR. KELLOCK: Exactly.

THE COMMISSIONER: I know that.

MR. KELLOCK: That is the point, my lord, and the other point is, as Mr. Hooper explains it, and I am coming to it, is that raw cotton, the price of the raw cotton and the raw cotton which is used in the

dealing with mill spread the price of raw cotton at a particular date is taken, and the selling price, and the spread. Now, the price of raw cotter and the selling price is taken on the same day, but the raw cotton which --

THE COMMISSIONER: Not forgetting that raw cotton [illegible]

MR. [illegible]: [illegible] my lord, that the raw cotton which is [illegible] certain price on a certain day is not raw cotton which is sold at the same price on the same day because it has to be [illegible] by the mill and is sold sub-[illegible].

[illegible] MR. [illegible]

MR. [illegible]: Isn't it probably [illegible] you [illegible] that?

MR. [illegible]: Oh, please don't confuse it. All I am pointing out to your Lordship is --

THE COMMISSIONER: You mean the cotton you are buying to-day is not the cotton you have in this cloth?

MR. [illegible]: Exactly.

THE COMMISSIONER: I know that.

MR. [illegible]: That is the point, my lord, and the [illegible] point is, as Mr. [illegible] pointed it, [illegible] dealing in fact in that raw cotton. The price of the raw cotton and the raw cotton which is used in the

exhibit is not necessarily at all the raw cotton which is included in the cotton yarn or cotton fabric under consideration.

THE COMMISSIONER: I know; the cotton in the fabric may have cost you more or less.

MR. KELLOCK: And it may be an entirely different grade, my lord, as Mr. Hooper pointed out than in our spot cotton in New York. Now, there are different staple lengths and there are different grades in each staple length.

THE COMMISSIONER: You mean the price quoted as in raw cotton in New York.

MR. KELLOCK: Yes, and the actual price may be up or down from that.

THE COMMISSIONER: Raw cotton, I suppose, is the standard.

MR.KELLOCK: It is what is called spot raw cotton.

THE COMMISSIONER: The grades will be up or down.

MR. HOOPER: It is called middlings, my lord.

THE COMMISSIONER: I have some idea what it means. It is like wheat. You quote a certain grade of wheat every day. There is a premium on some grades and a margin below on others.

MR. KELLOCK: And in the cost of raw cotton you have this variable which you do not have in wheat, that you have different staple lengths in raw cotton which command different prices and different grades in each staple length which command different prices.

exhibit is not necessarily of all the raw cotton which is included in the cotton yarn or cotton fabric under consideration.

THE COMMISSIONER: I know; the cotton in the fabric may have cost you more or less.

Mr. ALLDOUGH: And it may be an entirely different grade, my lord, as Mr. Hooper pointed out than is our most cotton in New York. Now, there are different staple lengths and there are different grades in each staple length.

THE COMMISSIONER: You mean the price varies in raw cotton in New York.

Mr. ALLDOUGH: Yes, and the actual price may be up or down from that.

THE COMMISSIONER: Staple, I mean, is the standard.

Mr. ALLDOUGH: It is what is called spot raw cotton.

THE COMMISSIONER: The grades will go up or down.

Mr. HOOPER: It is called middlings, my lord.

THE COMMISSIONER: I have some idea what it means. It is like wheat. You quote a certain price of wheat every day. There is a premium on some grades and a margin below on others.

Mr. ALLDOUGH: And in the cost of raw cotton you have this variable which you do not have in wheat; that you have different staple length in raw cotton, which demand different prices and different prices for each staple length and grade.

THE COMMISSIONER: It is not far different.

MR. KELLOCK: Therefore in the margin if you simply take middlings spot raw cotton you do not take into consideration at all all these factors which affect the mill spread.

THE COMMISSIONER: When you are comparing two mill spreads of two different mills here, or of the total industry here and the total industry of another country it is a fair enough beginning factor.

MR. KELLOCK: Yes.

THE COMMISSIONER: That is what it is used for here.

MR. KELLOCK: My only submission is my friend uses it to argue a profit, or an additional profit, and my submission is you can only use it to show a trend in the return to the mill out of which all these things must come, and you cannot say whether it has a profit.

THE COMMISSIONER: A trend towards increased return to the mill.

MR. KELLOCK: That is all. You cannot say whether it has a profit or not, because if you are comparing the Canadian mill spread and the American mill spread you have got to know whether the American mill spread involves a profit or not.

THE COMMISSIONER: One of the things I must find out specifically is exactly that, your profits.

MR. KELLOCK: All I am pointing to is this argument of my friend cannot be supported by mill spreads alone, because as I come to the evidence the

THE CHAIRMAN: It is not for different.

Mr. MAGOON: Therefore is the result if, on already two millions spent you do not take into consideration at all all these factors which affect the mill spread.

MR. CHAMBERLAIN: When you are comparing the mill spreads of two different mills here, or of the total industry here and the total industry of another country it is a fair enough mechanical factor.

Mr. MAGOON: Yes.

THE CHAIRMAN: What is what it is used for here.

Mr. MAGOON: My only submission to my friend was it to create a profit, or an additional profit, and my submission is you can only use it to show a trend in the returns to the mill out of which all these things must come, and you cannot say whether it has created it.

MR. CHAMBERLAIN: A trend towards increased return to the mill.

Mr. MAGOON: That is all. You cannot say whether it has a profit or not, because if you are comparing the Canadian mill spread and the American mill spread you have got to know whether the American mill spread involves a profit or not.

THE CHAIRMAN: One of the things I must find out specifically is exactly that, your profits.

MR. MAGOON: All I am pointing to is this argument of my friend cannot be supported by mill spreads alone, because as I come to the [illegible]

evidence is at this particular time there was no profit in the American mill spreads but rather heavy losses.

MR. McRUER: I said additional profit to the Canadian mill.

THE COMMISSIONER: No profit to the American mills?

MR. KELLOCK: Yes, my lord. My friend, as your lordship sees, is taking from June, 1933 on when the effect of the N.R.A. began to be operating in the United States, and prices were increased and mill spreads were increased, and there were some increases in the Canadian mill spread, and my friend simply says the increase in the Canadian mill spread was additional profit.

MR. McRUER: Do you say they were not making a profit then?

MR. KELLOCK: I am going to deal with it in time.

The first thing I want to call to your lordship's attention in connection with the reduction in wages in the Canadian mills is that if mill margins are to be depended on from the standpoint of profit, or additional profit, or anything else, these mills would have been justified in decreasing wages before they did. Your lordship recalls in the cotton mills wages were decreased at the end of March, 1933 -- in April; that is the beginning of the 1934 year of the companies. Then, there are only three exhibits, examples of mill spreads which my friend takes to base

evidence is at this particular time there was no profit in the American mill upwards but rather heavy losses.

MR. MCRUER: I said additional profit to the Canadian mill.

THE COMMISSIONER: No profit to the American mills?

MR. ADLOOK: Yes, my lord. My friend, as your lordship sees, is taking from June, 1916 on when the effect of the N.R.A. began to be operating in the United States, and prices were increased and mill wages were increased, and there were some increases in the Canadian mill spread, and my friend simply says the increase in the Canadian mill spread was additional profit.

MR. MCRUER: Do you say they were not making a profit then?

MR. ADLOOK: I am going to deal with it in time.

The first thing I want to call to your lordship's attention in connection with the reduction in wages in the Canadian mills is that if mill wages are to be regarded as from the standpoint of profit, or additional profit, or anything else, these mills would have been justified in decreasing wages before they did. Your lordship recalls in the cotton mills wages were increased at the end of March, 1917 — in April; that is the beginning of the 1917 year of the commission. Then, there are two interesting examples of mill spreads which my friend seems to have

his conclusion upon, and those are exhibits 821, 823 and 826. Now, taking 821, my lord, March 11--

THE COMMISSIONER: You have added 821 to the ones Mr. McRuer refers to?

MR. KELLOCK: No, my friend uses 821. He uses 821, 823 and 826. Taking 821, on the 11th of March, 1929 -- and I am taking dates as close to the corresponding time of the year when wages were reduced in the Canadian mills as I can -- March 11, 1929, the Canadian mill spread was 15.46, and on June 4th --

THE COMMISSIONER: Just a minute.

MR. KELLOCK: March 11, 1929, my lord.

THE COMMISSIONER: How much was the Canadian mill spread?

MR. KELLOCK: 15.46. In 1930, June 4th, it was 13.21. On June 1st, 1931, it was 13.67. On August 12th, 1932, it was 12.81, and on December 6th of that year it went up to 14.96. On April 26, 1933 it was 13.60 which, with the exception of the August, 1932 figure, was the lowest it had been. On the figures I have given -- your lordship will find by scrutinizing this exhibit it did go lower at a certain time. It went down to ten something, but I haven't taken the depths. I have followed that particular time.

MR. McRUER: In September, 1931, it was 15.30. You have got to take an average.

MR. KELLOCK: I am taking it as close as I can to the period of the year I am dealing with. Then, we come to exhibit 823. On March 11, 1929, it was 26.08.

THE COMMISSIONER: What is this, United States?

MR. KELLOCK: No, still Canadian, my lord. On June 4th --

THE COMMISSIONER: Pardon me till I understand this. What is the difference in these two exhibits?

MR. KELLOCK: Exhibit 8--

THE COMMISSIONER: You have given me March 11, 1929, Canadian mill spread 15.46.

MR. KELLOCK: That is on Exhibit 821.

THE COMMISSIONER: What is the difference between the two exhibits?

MR. KELLOCK: They are two different yarns.

THE COMMISSIONER: Oh, that is alright.

MR. KELLOCK: Exhibit 823; on March 11, 1929 it is 26.08. June 4th, 1930, 25.34. On June 1st, 1931, 24.42. On June 29th, 1932, 23.23. On March 31, 1933, the last date before the reduction in wages, it was 23.78. So your lordship sees again the trend since 1929. Now, taking the last exhibit which is 826 --

MR. McRUER: You do not compare them with the American on the same date.

MR. KELLOCK: I cannot do it all at once. Taking the same date, my lord, March 11th, 1929, in this exhibit it is 23.83. On June 4, 1930, 22.21. June 1st, 1931, 22.92. June 29, 1932 it is 20.48. March 31, 1933 it is 21.03, and on April 26 following this 20.60.

THE COMMISSIONER: April 26, which year?

MR. KELLOCK: 1933, my lord.

THE COMMISSIONER: What is this, United States?

MR. [illegible]: No, only Canadian, my Lord.

On June 4th --

THE COMMISSIONER: Perhaps you will understand this. What is the difference in these two exhibits?

MR. ALLDOUGH: Well let's --

THE COMMISSIONER: You have given me March 11.

[illegible]: Counsel will answer that.

MR. ALLDOUGH: That is on Exhibit 8M.

THE COMMISSIONER: What is the difference between the two exhibits?

MR. ALLDOUGH: They are two different years.

THE COMMISSIONER: Oh, that is right.

MR. ALLDOUGH: Exhibit 8MS; on March 11, 1929 it is 26.08. June 4th, 1930, 23.34. On June 1st, 1931 [illegible]. [illegible] June [illegible], [illegible] 1932, the last de to before the reduction in wages, it was 22.78. Do your Lordship see again the trend since 1929. Now, taking the last exhibit which is 8M6 --

MR. MACKAY: You do not compare them with the American on the same date.

MR. ALLDOUGH: I cannot do it all at once. Taking the same date, my Lord, March 11th, 1929, in this exhibit it is 22.85. On June 4, 1930, 22.84. June 1st, 1931, 22.92. June 13, 1932 it is 20.46. March 31, 1932 it is 21.03, and on April 30 reflecting this 20.60.

THE COMMISSIONER: April 30, which year?

MR. ALLDOUGH: 1932, my Lord.

THE COMMISSIONER: Did you give me two dates in 1933?

MR. KELLOCK: Yes, I gave you March 31, 21.05 and April 26, 20.60.

THE COMMISSIONER: How much?

MR. KELLOCK: 20.60. These exhibits, my lord, on these corresponding dates all tell the same story, that there was a decrease in the Canadian mill spread from 1929 down to the time when wages were decreased, and, in fact, in some of the cases the mill spread had reached a lower point than it did when the decrease was finally made. A scrutiny of the exhibits would show at certain dates they are lower than I have given your lordship, but as between 1929, when things were more or less normal, to the time when the decrease was made there was a considerable shrinkage in the mill spreads insofar as these particular three yarns tell the story at all, and, of course, my lord, my submission is that if we are looking for profits, and what the story about profits was, I have given your lordship the actual profits, not only on one yarn or one fabric, but on the entire output of the mill which I submit is what tells the accurate story.

Now, my lord, at the end of March, or in April, 1933, when the mill spreads had reached that point the Canadian mills did not know that the N.R.A. was going to be effective in the United States.

THE COMMISSIONER: What do you mean by effective?

MR. KELLOCK: In operation.

THE COMMISSIONER: They did not know that when?

THE COMMISSIONER: Did you give me two dates in [illegible]

MR. [illegible]: Yes, I gave you March 31, 31.00 and [illegible].

THE COMMISSIONER: How much?

MR. [illegible]: 25.00. These exhibits, my Lord, on these source auditing dates all tell the same story, that there was a decrease in the Canadian mill spread from 1929 down to the time when wages were decreased, and, in fact, in some of the cases the mill spread had reached a lower point than it did when the decrease was finally made. A scrutiny of the exhibits would show at certain dates they are lower than I have given your Lordship, but as between 1929, when things were more or less normal, to the time when the decrease was made there was a considerable slackness in the mill spreads in order as these particular three years tell the story at all, and, of course, my Lord, my submission is that if we are looking for profits, and what the story about profits was, I have given your Lordship the actual profits, not only on one year or one fabric, but on the entire output of the mill which I submit is what tells the whole story.

Now, my Lord, at the end of March, or in April, when the mill spreads had reached that point the Canadian mills did not know that the N.R.A. was going to be effective in the United States.

MR. [illegible]: In operation.

THE COMMISSIONER: They did not know that [illegible]

MR. KELLOCK: In March of 1933, because the President was only inaugurated on the 4th of March, and even though they did know that, they would not know what would be the effect of that on American selling prices, and how soon that effect would manifest itself, and, as a matter of history, when the effect of the introduction of the N.R.A. in June, or August of 1933, whenever it became operative -- July of 1933.

THE COMMISSIONER: July, 1933.

MR. KELLOCK: July, 1933; when the effect of that did make itself effective then that was followed at the end of the Canadian mills' year by a partial restoration of the wages in April, 1934.

MR. McRUER: What difference does the N.R.A. have on Canada? That is what always puzzled me.

MR. KELLOCK: If you just have a little patience I will try to meet that, too. Now, my lord if -- I am going to give your lordship the evidence just in a moment -- if, at the time immediately prior to the introduction of the N.R.A. in the United States the American mills' selling prices were ruinous, or anything you like to put it, involving heavy losses, or substantial losses, or even a loss, that effect would operate as a threat to the Canadian industry because -- and your lordship will see in a moment the extent to which the American mill spreads had fallen -- because no matter what the tariff was if the American selling price had descended to the point where they were selling at heavy losses they might easily get to the point if the tendency continued -- and, in fact, in some cases, at least, we

MR. KNIGHT: In view of this, because the President was only inaugurated on the 4th of March, and even though they did know that, they would not know what would be the effect of that on American selling prices, and how soon that effect would manifest itself, and, as a matter of history, when the effect of the Lausanne Conference of the R.A.A. in June, or August of 1932, whatever it became operative -- July of 1932.

THE COMMISSIONER: July, 1932.

Mr. KNIGHT: July, 1932: when the effect of that did make itself effective then that was followed at the end of the Canadian milk[1] part by a partial reconstitution of the wages in April, 1934.

Mr. McPHAIL: But difference does the R.A.A. have on Canada? That is what always puzzled me.

MR. KNIGHT: If you just have a little patience I will try to meet that, too. Now, my lord if -- I am going to give your lordship just in a moment -- if, at the time immediately prior to the introduction of the R.A.A. in the United States the American selling prices were ruinous, or anything you like to put it, involving heavy losses, or substantial losses or even a loss, that effect would operate as a check to the Canadian industry because -- and your lordship will see in a moment the extent to which the American mill spreads had fallen -- because no matter what the tariff was if the American selling price had dropped to the point where they were selling at heavy losses they might easily get to the point if the tariff continued -- and, in fact, in some cases, at least,

have definite evidence it did reach the point -- that that stuff would come in here regardless of the tariff.

MR. McRUER: You had the valuations on in 1922.

MR. KELLOCK: Please, please; that did constitute a threat --

THE COMMISSIONER: As a matter of fact, what Mr. McRuer says must be taken into account. You did have the valuations. Steps were taken here to prevent such a thing.

MR. KELLOCK: I was coming to that, my lord. He had valuations on a few articles --

MR. McRUER: A few!

MR. KELLOCK: And these valuations establish the point that I am making, my lord, that regardless of what the American mill spreads were -- I am going to show your lordship the degree to which they had fallen -- these articles, at least, which were affected by the valuations, were selling below cost of production in the United States.

THE COMMISSIONER: In the United States, but you see the tariff legislation is designed to watch and prevent dumping.

MR. KELLOCK: And it had to be invoked in certain cases.

THE COMMISSIONER: It was. You had it there.

MR. McRUER: How can you say a few articles on which there were valuations?

MR. KELLOCK: Exhibits 827, 828 and 848.

MR. McRUER: 2,000 fabrics, Mr. Hooper tells me.

You cannot say that is a few articles.

MR. KELLOCK: Now, my lord, I want to refer your lordship to exhibit 932 which is a report on the conditions and problems of the cotton textile industry made by the cabinet committee appointed by the president. At page 67 there is a table there which shows cotton and print cloth prices and mill margins, 1923 to 1935, in the United States, and June, for instance, of 1923, the mill margin was 21.15.

THE COMMISSIONER: In the United States?

MR. KELLOCK: In the United States, my lord.

THE COMMISSIONER: When was this?

MR. KELLOCK: In June of 19-- well, if I give your lordship the following month then I will give your lordship the lowest in each year. July of 1923 it was 17.06.

THE COMMISSIONER: You mean 1933?

MR. KELLOCK: 1923, my lord. In April of 1924 the lowest was 13.02. In June of 1925, the lowest for that year was in that month, 19.69. The lowest in 1926 was July when it was 17.45. The lowest in 1927 was May when it was 18.65. The lowest in 1928 was July when it was 17.34. The lowest in 1929 was June when it was 16.45. The lowest in 1930 was August, 13.05. The lowest in 1931 was December when it was 10.89. The lowest in 1932 was in May when it was 9.54. In 1933, the lowest in February, when it was 9.16. Your lordship sees the extent to which, up to the time when we reduced wages here, the American

You cannot say that is a fair article.

Mr. HARLOW: Now, my lord, I want to refer your lordship to exhibit 386 which is a report on the conditions and prospects of the cotton textile industry made by the council [illegible]

At page 67 there is a table there which shows cotton and mixed cloth [illegible] in the United [illegible] the mill margin was [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

your lordship the following [illegible]

your lordship the lowest in [illegible]

in the [illegible]

THE COMMISSIONER: [illegible]

Mr. [illegible] HARLOW: My lord, [illegible] the lowest was 13.02. In the year [illegible] for that year was in that month, 9.8. [illegible] in 1926 was only when it was 17.45. The [illegible] 1927 was May when it was 18.66. The lowest in [illegible] was only when it was 17.24. The lowest in [illegible] times when it was 16.45. The lowest in 1930 [illegible] 16.08. The lowest in 1931 was December when it [illegible] 10.84. The lowest in 1932 was in May when it was 9.34. In 1933, the lowest in February, when it was [illegible]. Year [illegible] in [illegible], in the [illegible] or [illegible] [illegible], the [illegible]

mill margins had sunk, and there was no --

MR. McRUER: What articles are those?

MR. KELLOCK: I have given it; it is cotton and print cloth.

MR. McRUER: This is dealing with yarn.

MR. KELLOCK: I know, and the exhibits you spoke about a few minutes ago dealt with fabrics, 827, 828 and 848, and I could not find in this exhibit any mill margins on yarns or I would have given it to his lordship.

MR. McRUER: Because we give you very much lower mill margins on yarn than that. We give you one of 3.83. That is August, 1931.

MR. KELLOCK: Alright, I will take my friend's 3.83.

THE COMMISSIONER: What exhibit do you get that from, 821?

MR. McRUER: Yes, my lord.

MR. KELLOCK: I am told that is the natural thing. The mill margin on yarn will be lower than it is on fabric. However that may be that is the story.

Now, my friend, my lord, in his conclusion assumes that prior to the time that the Canadian mill margins began to increase after July of 1933 that we were already making sufficient profit at that time, and he assumes that there was a profit still in these American mill margins. My friend overlooks the difference in expense in the carrying on of the Canadian industry

mill margins had sunk, and there was no --

MR. McRUER: What articles are those?

MR. KELLOCK: I have given it; it is cotton and print cloth.

MR. McRUER: This is dealing with yarn.

MR. KELLOCK: I know, and the witnesses you called a few minutes ago dealt with fabrics, SSC, SSD and SSE, and I could not find in this exhibit any mill margins on [illegible] I have given it to [illegible] JAYMOND.

MR. McRUER: Because we give you very much lower mill margins on yarn than that. We give you one of S.SS. That is August, 1951.

MR. KELLOCK: Alright, I will take my friend's S.SS.

THE COMMISSIONER: What exhibit do you get that from, SSD?

MR. McRUER: Yes, my lord.

MR. KELLOCK: I am told that is the natural thing. The mill margin on yarn will be lower than it is on fabric. However that may be that is the story.

Now, my friend, my lord, in his cross-examination assumes that prior to the time that the Canadian mill margins began to increase after July of 1950 that we were [illegible] [illegible] like that, and assumes that there was a profit still in those American mill margins. My friend overlooks the difference in [illegible] margins as to the [illegible]

than in the cost of the American industry, and the difference in taxation. Aside from sales tax on the particular yarn or fabric we have to pay sales tax on capital expenditure which the American industry does not pay at all.

THE COMMISSIONER: What is that?

MR. KELLOCK: On capital expenditures, my lord; for instance, extensions to our plant, we pay sales tax on the value of that.

THE COMMISSIONER: Sales tax?

MR. KELLOCK: Sales tax, yes, my lord.

THE COMMISSIONER: How does it work? How does it work out? How is it calculated? You say on extensions to your plant?

MR. KELLOCK: We pay sales tax on the material and so on.

THE COMMISSIONER: The material you buy to put into your plant?

MR. KELLOCK: Yes, and I am also told we pay sales tax on the rollers we engrave in our own plant.

THE COMMISSIONER: When you buy them.

MR. KELLOCK: No, when we do it ourselves in our own plant we pay sales tax on the value of the work.

THE COMMISSIONER: Sort of an excise.

MR. KELLOCK: Yes, my lord, they call it a sales tax. It is under the Special War Revenue Act.

THE COMMISSIONER: It takes the place of the sales tax.

MR. KELLOCK: If I might just refer to what Mr.

that is the cost of the American industry, and the difference in taxation. Aside from sales tax on the particular yarn or fabric we have to pay sales tax on capital expenditure which the American industry does not pay at all.

THE COMMISSIONER: What is that?

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MR. KILLOCK: Yes, my lord.

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THE COMMISSIONER: When you buy them.

MR. KILLOCK: No, when we do it ourselves in our own plant we pay sales tax on the value of the work.

THE COMMISSIONER: Sort of an excise.

MR. KILLOCK: Yes, my lord, they call it a sales tax. I think that is similar to excise tax.

THE COMMISSIONER: If you can find out what the rate is.

MR. KILLOCK: If I might just refer to that my

Hooper says about these mill margins for a moment at 12156 commencing at line 13.

"Q. Now, turn to Exhibit 827"--

THE COMMISSIONER: What is the page?

MR.KELLOCK: 12156, line 13, my lord. Exhibit 827, your lordship will recall, was the appraisal that was put on certain articles by reason of the fact that the prices in the United States were below the cost of production.

"Q. Now turn to Exhibit 827. Do you recall that? It was your Departmental Bulletin?

A. Yes, a Departmental letter.

Q. A Departmental Letter of April 7, 1932. It went into effect on that date, applicable to cotton grey goods, and it provided a basis for appraising these goods at a certain fixed valuation. A. It is not a fixed valuation, but at a certain valuation. The department only uses the term 'fixed' valuation' when speaking of values fixed by the Minister under section 43".

THE COMMISSIONER: Did the bulletin refer specifically to United States goods?

MR. HOOPER: Yes, my lord.

MR. KELLOCK: Yes, my lord.

"Q. It was 7 cents a pound for certain weights and certain conditions? A. That is right.

Q. And it did not matter about the invoice value?

A. No, provided the invoice value was higher. This is the minimum value.

hooper says about there will remain for a moment at 1836 commencing at line 16.

"Q. Now, turn to Exhibit 887"--

THE COMMISSIONER: What is the page?

MR.MACDONALD: 1836, line 16, my Lord. Exhibit 887, your Lordship will recall, was the speech that was put on certain articles by reason of the fact that the prices in the United States were below the cost of production.

"Q. Now turn to Exhibit 884. Do you recall that? Is was your departmental bulletin?

A. Yes, a departmental letter.

Q. Departmental bulletin, I mean.

It went into effect on that date, applicable to cotton grey goods, and it provided a basis for appraising these goods at a certain fixed valuation. A. It is not a fixed valuation, but at a certain valuation. The department on [illegible] fixed [illegible] of values fixed by the Minister under section 42".

Q. Do you say that so accurately?

A. Yes, so I have.

MR. MACDONALD: Yes, my Lord.

"Q. It was 7 cents a pound for certain weights and certain conditions? A. That is right.

Q. And it did not matter about the invoice value?

A. No, provided the invoice value was higher. This is the minimum value.

"Q. Now, that departmental action --

THE COMMISSIONER: What was the action?

MR. KELLOCK: That was under section 36, subsection 2, is not that correct, Mr. Hooper?

A. Yes.

Q. And was the action of the department under that section due to the fact that American selling prices were below the cost of production at that time? A. Yes, sir.

BY THE COMMISSIONER: Q. That is below American costs? A. Yes, sir.

BY MR. KELLOCK: Q. And this action was to equalize selling prices in the United States and Canada so that a United States manufacturer could not dump into Canada? A. Yes, sir."

Then, on the following page at line 24, my lord.

"Q. That latter Bulletin continued in operation to September 5, 1933, is that right? A. Yes, that one or the subsequent one.

Q. I think that is the one. A. Bulletin 828 became effective on September 13, and stayed in effect until September 5, 1933.

Q. The date really does not matter. The note I have is that cotton fabrics were appraised under this 827 until September 13, 1932, and then there was another which operated until September of the following year. A. Until September 13, 1932, and then there was another which operated until September 5, 1933.

"A. Now, that department ceiling --

THE COMMISSIONER: What was the ceiling?

MR. KNOWLTON: That was under section 26, subsection 2, Liquor Control Act, 1929.

A. Yes.

Q. And was the action of the government under that section due to the fact that maximum selling prices were below the cost of production at that time? A. Yes, sir.

BY THE COMMISSIONER: Q. That is below American costs? A. Yes, sir.

BY MR. KNOWLTON: Q. And this action was to equalize selling prices in the United States a little so that the United States manufacturer could not dump into Canada? A. Yes, sir."

Then, on the following page at line 24, my learned friend:

"Q. The Letter Bulletin continued in operation to September 5, 1930, is that right? A. Yes, that one or the subsequent one.

Q. I think that is the one. A. Bulletin 888 became effective on December 14, and stayed in effect until September 5, 1930.

Q. The date really does not matter. The note I have is that cotton prices were operated under this 888 until December 14, 1928, and then there was another which operated until September of the following year. It will be seen, Mr. Lynch, and then there was another which operated until September 5, 1930."

"Q. Now, what is the reason for the cancellation of that letter or Bulletin and the method of appraisal under it in September 1933? Was it due to the fact that the American mills were then selling at about the normal selling price, which would include a reasonable profit?

A. The Bulletin or the values contained in that Bulletin were of no effect after some time in July 1933, until it was cancelled. I will not give you the reason for its cancellation unless His Lordship so rules. I know why it was cancelled.

Q. I am not asking you that. I am asking you if its cancellation was due to the fact that the American mill selling price had come up to the point where the selling prices were at least equal to their cost of production or above that, involving a reasonable profit? A. They did come up above that, yes.

Q. Now, I would ask you to go back to Exhibits 820 and 821 on that same subject matter. If you will look at Exhibit 821, on the 1st of August, 1931, the American mill spread was $3.83.

A. 3.83 cents or $3.83 a hundred.

Q. Yes, and on June 29, 1932, which is the next date, the mill spread was 4.12 cents, and then when Exhibit 827 went into operation on April 7, 1932, that is the departmental letter providing for the basis of appraisal, which is in between those dates, Mr. Hooper? A. Yes,

Q. Now, what is the reason for the cancellation of that letter or bulletin and the method of appraisal under it in September 1932? Was it due to the fact that the American mills were then selling at about the normal selling price which would include a reasonable profit?

A. The bulletin or the values contained in that bulletin were of no effect after some time in July 1932, until it was cancelled. I will give you the reason for its cancellation when the occasion so rules. I know why it was cancelled.

Q. I am not asking you that. I am asking you if its cancellation was due to the fact that the American mill selling price had come up to the point where the selling price was in equal to their cost of production or above that, involving a reasonable profit? A. They did come up above that, yes.

Q. Now, I would ask you to go back to Exhibit 320 and 321 on that same subject matter. If you will look at Exhibit 321, on the 1st of August 1931, the American mill spread was $4.80.

Q. 3.85 cents or $4.85 a hundred.

A. Yes, and on June 28, 1932, which is the next date, the mill spread was $4.12 cents, and then when Exhibit 320 was issued on April 7, 1932, that is the departmental letter providing for the basis of appraisal, which is in between those dates, Mr. Cooper? A. Yes.

"Q. Now those mill spreads to which I have called your attention were mill spreads at a time when American mills were selling below their cost of production? A. Yes, sir.

Q. I take it from what answers you have just made, Mr. Hooper, that you do not suggest that if there is an absolute increase in mill spreads that that means the mills are enjoying a profit by reason of that increase. You can take those two dates, if you like. A. They are enjoying?

Q. A profit. A. I would not say that you could bring the word 'profit' in there because their production may be down, and that may mean ultimate loss. They are receiving more money for their yarn.

Q. Yes, but it does not necessarily involve a profit? A. Taking into account the raw cotton they are receiving more money for their yarn but it does not necessarily involve a profit because their production may be down.

Q. Or there may be a lot of other factors?

A. Yes.

THE COMMISSIONER: You say a whole lot of other factors. What other factors do you suggest?

BY MR. KELLOCK: Q. There may be decreased production. What else, Mr. Hooper?

A. Increase in sales tax on sample articles.

Q. Anything else? Increased overhead for many reasons? A. Why would there be increased overhead?

"Q. Now those mill spreads to which I have called your attention were mill spreads at a time when factories mills were rolling below the cost of production? A. Yes, sir.

Q. I take it from what answers you have just made, Mr. Hooper, that you do not suggest that if there is an absolute increase in mill spreads that that means the mills are enjoying a profit by reason of that increase. You can take those two dates, if you like. A. They are enjoying?

Q. A profit. A. I would not say that you could bring the word 'profit' in there because their production may be down, and that may mean ultimate loss. They are receiving more money for their yarn.

Q. Yes, but it does not necessarily involve a profit? A. Taking into account the raw cotton they are receiving more money for their yarn but it does not necessarily involve a profit because their production may be down.

Q. Or there may be a lot of other factors?

A. Yes.

THE COMMISSIONER: You say a whole lot of other factors. What other factors do you mean exactly? or Mr. ADAMSON: Q. There may be decreased production. What else, Mr. Hooper?

A. Large sales tax on sample articles.

Q. Anything else? Increased overhead for many reasons? A. Why would there be increased overhead?

"Q. Let me put it this way, if I may answer His Lordship's question. Mill spread includes gross return to the manufacturer for his services over and above raw material the way you have prepared the costs? A. Yes, the way I have prepared them.

Q. And in mill spreads there is wages, and over that, cost and profit, if any. Is that right?

A. Yes, that is right.

Q. Now when you have an absolute increase in mill spread, that might be due to increased wages or increased costs of any other nature. Is that right? A. Yes.

Q. It does not necessarily mean a profit, and the only way you can find out what it really does mean is by analyzing it. Is that right?

A. That is right.

Q. And you have not done that? A. Well, the information before the court is that there has been a decrease in wages and the mill spread has increased in many cases. So maybe it is up to your clients to show why there was an increase, not to ask me.

Q. Is that what you are putting over on me?

A. I am suggesting something there.

THE COMMISSIONER: He says, do not ask him."

Now, my lord, the only value, therefore, in my submission on that evidence, and on all the evidence, is that it only shows a trend in the increasing or decreasing return to the mill, and if you want to get

"Q. Let me put it this way, if I may answer his worship's question. Will general industrial gross return to the manufacturer for his services over and above raw material the way you have procured the course? A. Yes, the way I have procured them.

Q. And in mill spreads there is wages, and overhead, cost and profit, if any. Is that right? A. Yes, that is right.

Q. Now when you have an absolute increase in mill spread, that might be due to increased wages or increased costs of any other nature. Is that right? A. Yes.

Q. It does not necessarily mean a profit, and the only way you can find out what it really does mean is by analyzing it. Is that right?

A. That is right.

Q. And you have not done that? A. Well, the information before the court is that there has been a decrease in wages and the mill spread has increased in many cases. So maybe it is up to your efforts to show why there was an increase, not to ask me.

Q. Is that what you are putting over on me?

A. I am suggesting something there.

THE COMMISSIONER: He says, do not ask him."

Now, my lord, the only value, therefore, in my submission on that evidence, and on all the evidence, is that it only shows a trend in the increasing or decreasing return to the mill, and if you want to

at the question of profit you have got to analyze and go deeper. Now, you have the evidence before your lordship as to the return in the shape of profit to the shareholders in the cotton industry between 1929 and 1932, and I could continue it. In 1929 it was 4.9%. That is on the output of all mills. I have given that to your lordship in the statement at the end of section "E" of my factum. 1929 it was --

THE COMMISSIONER: Just a minute.

MR. McRUER: Is that the cotton industry or the whole industry?

MR. KELLOCK: The cotton industry.

THE COMMISSIONER: At the end of "E"?

MR. KELLOCK: I am sorry, my lord, the end of "D". It is statement three, page two. It is the first group on that table, my lord. You see statement three, page two, in the upper right hand corner, and taking the first section it is primary and industrial cottons, and in 1929, which is in the extreme right hand column --

THE COMMISSIONER: Pardon me a moment; what do you say it is, primary and industrial cottons?

MR. KELLOCK: That is the section we are dealing with.

THE COMMISSIONER: Is that marked here?

MR. KELLOCK: It is the first section on the table, my lord, and taking the far right hand column your lordship sees the fourth figure down is opposite the year 1929. Now, the net profit in that year was 4.9%. In 1930 it fell to 2.5 and 1931 --

THE COMMISSIONER: Pardon me a moment; in calculating these net profits and percentages did you take Mr. Howson's figures?

MR. KELLOCK: No, my lord, this is the assets of the company less their liabilities.

MR. McRUER: This is Mr. Kellock's way after bond interest and income taxes.

MR. KELLOCK: Yes, and what we are speaking of here is the return to the shareholders because my friend's criticism in his brief is that after July of 1933 that our prices went up to a certain extent and our mill spreads went up to a certain extent and our wages did not go up. My friend is wrong to some extent because our wages did go up in April, 1934, and he says any extra return simply went to the shareholders and not to the employees. Now, this is what the shareholders got.

THE COMMISSIONER: You say that is after deduction of payments made for interest?

MR. KELLOCK: It is the true net profits to shareholders.

THE COMMISSIONER: Never mind that.

MR. KELLOCK: After all expenses, my lord.

THE COMMISSIONER: Payment of interest and what else?

MR. KELLOCK: Bond interest or bank interest or income taxes, whatever the expense is.

MR. McRUER: It is on the equity -- on the basis of a return on goodwill or anything, appraised values, and so on.

THE COMMISSIONER: Perhaps we can agree: in calculating these net profits and percentages did you use Mr. Hanna's figures?

MR. KELLOCK: No, my lord, this is the source of the company less their liabilities.

MR. MACDONALD: Well, [illegible] bond interest and income taxes.

MR. KELLOCK: Yes, and what we are arguing for here is the return to the shareholders because on the claim in his brief is that after July of 1920 that our prices went up to a certain extent and our mill supplies went up to a certain extent and our wages did not go up. My friend is wrong to some extent because our wages did go up in April, 1924, and he says any extra return simply went to the shareholders and not to the employees. Now, this is what the shareholders get.

[illegible] of payments made for interest?

MR. KELLOCK: It is the true net profits to [illegible].

THE COMMISSIONER: Never mind that.

MR. KELLOCK: After all expenses, my lord.

THE COMMISSIONER: Payment of interest and [illegible]

MR. KELLOCK: Bond interest or bank interest or income taxes, whatever the expense is.

MR. MACDONALD: It is on the equity -- on the basis of a return on capital [illegible] and so on.

MR. KELLOCK: I have already explained if you take that out all you have to do is add .02% and you get the result.

THE COMMISSIONER: Take what out?

MR. KELLOCK: If you take goodwill out you just add .02% to these figures.

MR. McRUER: What about the appraisals?

MR. KELLOCK: As your lordship sees in 1929 the return was --

THE COMMISSIONER: Pardon me a moment.

MR. KELLOCK: I am sorry, my lord.

THE COMMISSIONER: Alright, Mr. Kellock, what do you say?

MR. KELLOCK: In 1929, my lord, the fourth figure down, it was 4.9%. In 1930, the following year, it fell to 2.5%. In 1931 it fell to 1.2%. In 1932 to 1.5%. In 1933 it went back to 5.8%. That was the end of the companies' year after the wages had been decreased at the beginning of 1933, and at that time after that experience the wages were increased by the 5% that your lordship has heard about.

(page 17125 follows)

MR. KELLOCK: I have already explained if you take that out all you have to do is add .02% and you get the result.

THE COMMISSIONER: Take that out?

MR. KELLOCK: If you take .02% out you have add .02% to these figures.

MR. McMILLAN: What about the more people?

MR. KELLOCK: As your lordship seen in 1924 the return was --

THE COMMISSIONER: Pardon me a moment.

MR. KELLOCK: I am sorry, my lord.

THE COMMISSIONER: Mr. Kellock, what do you say?

MR. KELLOCK: In 1923, my lord, the fourth figure down, it was 4.9%. In 1920, the fifth day year, it fell to 2.3%. In 1921 it fell to 1.2%. In 1922 to 1.2%. In 1923 it went back to 3.8%. That was the end of the economical year after the depression had been discovered at the beginning of 1921, and at that time after that experience the wages were increased by the 5% that your lordship has heard about.

(Adjourned)

The COMMISSIONER: The ten per cent reduction lasted only one year.

Mr. KELLOCK: Yes, there was a five per cent restoration in that year.

The COMMISSIONER: But these things are true of the whole industry.

Mr. KELLOCK: It is true of the cotton industry.

Mr. McRUER: How did the Canadian cotton industry come to make a uniform reduction ? It seems a curious accident.

Mr. KELLOCK: That point has never been raised before.

The COMMISSIONER: However, it was done at the same time and to the same extent, and the restoration likewise took place at the same time and also to the same extent.

Mr. KELLOCK: Which restoration ?

The COMMISSIONER: I am speaking of the first restoration.

Mr. KELLOCK: Yes, My Lord, in 1934; it was about the same time. It was after that experience, after that had taken place, as a result of the decreasing net profits that there was the ten per cent reduction, and Your Lordship will see that that was ddlayed for about three years, after the fall had set in, and the first year there was a better experience it was restored fifty per cent, having been finally restored entirely. That, I submit is what the real story is. There are just one or

The Mr. [illegible]: The ten per cent reduction lasted only one year.

Mr. [illegible]: Yes, there was a five per cent reduction in that year.

[illegible]

Mr. [illegible]: It is true of the cotton industry.

Mr. [illegible]: You did the Canadian cotton industry once to make a uniform reduction [illegible] seems a curious coincidence.

[illegible]

The [illegible]: However, it was done at the same time and to the same extent, and the reduction likewise took place at the same time and also to the same extent.

Mr. [illegible]: Which reduction?

The [illegible]: I am speaking of the first [illegible].

Mr. [illegible]: Yes, my Lord, in 1924; it was about the same time. It was after that experience, after that had taken place, as a result of the diminishing net profits that there was the ten per cent reduction, and Your Lordship will see that that was delayed for about three years, after the fall had set in, and the first year there was a better experience it was restored fifty per cent, having been finally restored entirely. That, I submit is what the real story is. There are just one or

two minor matters to which I wish to refer. On page 52 of his factum, in the second paragraph, Mr. McRuer refers to exhibit 820 and says that this exhibit shows that in June 1930 the protection on a pound of yarn amounted to 4.9 cents.

The COMMISSIONER: How is that arrived at ?

Mr. KELLOCK: I assume that is a computation based d on a result of the duties.

The COMMISSIONER: Ad valorem and specific, having regard to the cost ?

Mr. McRUER: The ad valorem was 20 per cent at that time; there was no specific in June 1930. The total duty payable was $4.90 on one hundred pounds of yarn.

The COMMISSIONER: On an ad valorem basis ?

Mr. McRUER: Yes.

The COMMISSIONER: Having regard to the cost of the article ?

Mr. McRUER: Yes, that is correct.

Mr. KELLOCK: My friend says that that was the protection on a pound of yarn; and then in October 1930 he says the protection amounted to 8.39 cents on a pound of yarn while the wages in the fabrication of that pound of yarn amounted to 6.6 cents.

The COMMISSIONER: That is the same in both cases.

Mr. McRUER: The wages remained the same but the protection went up from 4.9 to 8.39 cents.

Mr. KELLOCK: He does not say what the wages were

at the time the duty was 4.9.

The COMMISSIONER: I take it he is referring to both times.

Mr. McRUER: There was no reduction in the wages.

Mr. KELLOCK: Then my friend goes on to say that the protection given in 1930 amounted to 25 per cent. more than the whole of the mill wages paid.

The COMMISSIONER: That was in October 1930.

Mr. KELLOCK: Yes, My Lord; he says it amounted to 25 per cent more than the whole of the mill wages paid for the fabrication of the yarn.

The COMMISSIONER: He is taking the difference between the 8.39 and the 6.6.

Mr. KELLOCK: Yes. I do not know what the particular value of that is. Of course, protection is required not only to equalize the differences in direct wages but to cover all other differences in all other costs of production, whatever they may be. Direct wages form only one of those costs. We have of course indirect wages in everything we buy and all our overhead and everything else, so that it does not give the exact state of affairs simply to take one particular item and say that the protection amounts to so much.

The COMMISSIONER: If you buy from another protected industry that industry may come forward and say that it is paying what you call these indirect wages, and that it is not you who are paying them.

Mr. McRUER: The only thing you buy is raw cotton

at the time the duty was 4.7.

The CHAIRMAN: I take it he is referring to

Mr. HOUSTON: There was no reduction in the wages.

Mr. MILLER: Then by trying goes on to say the protection given in 1930 amounted to 25 per cent more than the whole of the mill wages paid.

The CHAIRMAN: That was in October 1929.

Mr. MILLER: Yes, it says; he says it amounted to 25 per cent more than the whole of the mill wages paid for the production of the year.

The CHAIRMAN: He is taking the difference

Mr. [illegible]: Yes, I do not know what the [illegible]. Of course, protection is [illegible] the differences in [illegible] over 47 cents in [illegible] and [illegible] all our overhead and everything else, so that it does not give the exact cents or [illegible] one particular item and say that the protection amounts to so much.

The CHAIRMAN: If you buy from another protected industry that industry may come forward and say that it is paying that you call these industrs wages, and that it is not you who are paying them.

Mr. HOUSTON: The only thing you buy is raw cotton

besides a few dyestuffs.

The COMMISSIONER: It becomes too involved when you say that you pay so much in indirect wages. If you buy mortar and bricks and pay for that material you are buying them from someone else and they pay the wages, and you say that you are paying indirect wages. That concern from which you buy those articles might say, "We subsidize the cotton industry." What difference does it make to you when you buy bricks and mortar and pay so much a pound for them--or on whatever basis you buy them ? How that is distributed back to the manufacturer of bricks cannot affect you.

Mr. KELLOCK: It does not make any difference in that regard.

The COMMISSIONER: Then why talk of indirect wagew.

Mr. KELLOCK: Because there are indirect wages in that.

The COMMISSIONER: You simply mean that your industry by its existence has that much good to its credit, that it buys the material that other people produce, enabling them to pay wages.

Mr. KELLOCK: No, My Lord; that is not what I mean in this connection.

The COMMISSIONER: Then I do not know what your meaning is.

Mr. KELLOCK: I submit that if we do pay an increased labour cost that it only one of our costs.

besides a few dynamite.

The COMMISSIONER: It becomes too involved when you say that you pay so much in income taxes. If you buy mortar and bricks and pay for this material you pay further duty from, assuming as we all know the wages, and you say that you are still [illegible] duties might say, "We consider the outcome unlikely that difference does it make to you what you buy bricks and mortar and pay so much a pound for them or on whatever basis you buy them? How that is distributed back to the manufacturer of bricks and [illegible] you.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

The COMMISSIONER: You already have that your industry by its evidence has that much good by its credit, that it buys the material that other people [illegible], [illegible] by [illegible].

Mr. [illegible]: No, My Lord; that is not what I [illegible].

The COMMISSIONER: Then I do not know what your [illegible].

Mr. [illegible]: I [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

The protection we get is not intended merely to protect us against that one particular factor, but to protect us against all additional costs, and therefore you cannot centre your attention on one item.

The COMMISSIONER: If you buy certain material which you require you can say that you are paying for that material; but why over-refine that by saying that you are paying indirect wages.

Mr.KELLOCK: It makes no difference looked at from that point of view. All that I am pointing out is that my direct wages constitute only one of my costs.

The COMMISSIONER: But you must buy these other things that you require; you buy then anyhow, whether your cost of raw material is up or down or whether your wages are constant or not. These things that you buy you must buy.

Mr. KELLOCK: They are affected by the standards in the country.

The COMMISSIONER: Do you intend to show me that the costs of these accessories were higher to you after October 1913 than they were before ?

Mr. KELLOCK: No, My Lord. All I am saying is that I do not know what the value of my friend's illustration is, because, as I say, my wages are only one of my costs.

Mr. McRUER: What other costs have you ?

Mr. KELLOCK: The protection I get is not given simply to take care of any extra labour cost I may have;

The protection we get is not intended merely to protect us against that one particular factor, but to protect us against all additional costs, and therefore you cannot centre your attention on one item.

The Commissioner: If you buy certain material which you require you can say that you are paying for that material; but why over-refine that by saying that you are paying highest wages.

Mr. Kilgour: It makes no difference looked at from that point of view. All that I am pointing out is that my direct wages constitute only one of my costs.

The Commissioner: But you must say those other costs that you examine; you buy then rubber, at that your cost of raw material to up or down or whether your wages are constant or not. Those things that you buy m you must buy.

Mr. Kilgour: They are affected by the standards in the country.

The Commissioner: Do you intend to show us that the costs of these commodities were higher to you after October 1913 than they were before?

Mr. Kilgour: No, my lord. All I am saying is that I do not know what the value of my friend's illustration is, because, as I say, my wages are [illegible] my costs.

Mr. [illegible]: Did [illegible]

Mr. Kilgour: The instance I gave illustrates simply to show [illegible]

it is intended to protect me against all other costs, of which labour is only one. When my friend deals with Exhibits 857 to 859, which are English yarns, he does not use this illustration at all. At page 58 he deals with these exhibits. Exhibits 857 and 858 are importations of two kinds of yarn from England, and he does not say anything about protection as compared with wages in a pound of that yarn. If you do that, you will find that the wages in a pound of yarn, taking Exhibit 857--

The COMMISSIONER: Whereabouts is that ?

Mr. KILLOCK: He begins to discuss them in the first paragraph at the top of the page. In the second sentence he says:

> "Exhibits 857 and 859 deal with similar yarns manufactured in Great Britain. On this yarn prior to September 1930 the ad valorem duty was 22 1-2 per cent."

But he does not compare the protection in a pound of that yarn with the wages in a pound of the same yarn. If you make that comparison you get the opposite result.

The COMMISSIONER: Is the question of protection discussed ?

Mr. KILLOCK: I can give Your Lordship the exact figure. The wages in a pound of yarn, taking Exhibit 857, are 10.57 cents according to my computation.

The COMMISSIONER: The wages in what ?

Mr. KILLOCK: The wages in a pound of yarn as

It is intended to protect us against all other courts, of which labour is only one. When my friend deals with Exhibits 827 to 830, which are English parts, he does not use this illustration at all. As page 5 he deals with these exhibits. Exhibits 827 and 828 are importations of two kinds of yarn from England, and he does not say anything about protection as compared with wages in a pound of that yarn. If you do that, you will find that the wages in a pound of yarn, [illegible]

The CHAIRMAN: Shortcuts is that?

Mr. ROLAND: He begins to discuss them in the first paragraph at the top of the page. In the second sentence he says:

"Exhibit s 827 and 830 deal with similar yarns manufactured in Great Britain. In this yarn prior to September 1921 the ad valorem duty was 22 1-2 per cent."

But he does not compare the protection in a pound of that yarn with the wages in a pound of the same yarn. If you make that comparison you get the opposite result.

The CHAIRMAN: Is the question of protection discussed?

Mr. ROLAND: I can give your Lordship the exact figure. The wages in a pound of yarn, taking weighing and [illegible]

The CHAIRMAN: What wages in each?

Mr. ROLAND: The wages in a pound of yarn at

dealt with in Exhibit 857. I work it out as 10.57 cents.

Mr. McRUER: How is it they are so much more than in a pound of the other yarn ?

Mr. KELLOCK: This is a different yarn.

Mr. McRUER: But how do you get at it ?

Mr. KELLOCK: In the same way that you did it; if my computation is wrong, you can correct it. Now the protection there is only 4.82 cents.

The COMMISSIONER: Is the protection reduced ?

Mr. KELLOCK: The protection in connection with that pound of yarn is only 4.82 cents.

The COMMISSIONER: And how much had it been before ?

Mr. KELLOCK: I am merely comparing this with my friend's American illustration, and he does not say that I got too much protection in the case of the United States and insufficient protection on yarn from Great Britain.

Mr. McRUER: Would not the 4.82 do more than equalize the difference between the wage cost in Great Britain and the wage cost in Canada ? It has never been suggested that the wage cost would be more than that. I do not think that suggestion has been made.

Mr. KELLOCK: I say there is nothing in the argument at all. In the one case you get a result where presumably it is too much, but it ignores all the other costs.

deal with in exhibit 38. I work it out as 10.3%

Mr. [illegible]: How is it they are so much more than in a pound of the other year?

Mr. [illegible]: This is a different year.

Mr. [illegible]: But how do you get at it?

Mr. [illegible]: In the same way that you did it; if my computation is wrong, you can correct it. Now the protection there is only 4.82 cents.

The COMMISSIONER: Is the protection reduced?

Mr. [illegible]: The protection in connection with that pound of yarn is only 4.82 cents.

The COMMISSIONER: And how much had it been [illegible]?

Mr. [illegible]: I am merely comparing this with my friend's American illustration, and he does not say that I put too much protection in the case of the United States and insufficient protection on yarn from Great Britain.

Mr. MORGAN: Would not the [illegible] 4.82 do more than equalize the difference between the wage cost in Great Britain and the wage cost in Canada? It has never been suggested that the wage cost would be more than that. I do not think that suggestion has been made.

Mr. MULOCK: I say there is nothing in the argument at all. In the one case you get a result where presumably it is too much, but it ignores all the other [illegible].

Mr. McRUER: You do not suggest that you ought to have protection equal to the whole amount of your wage bill, do you ? I say it is greater in either case; in one case it is more than the whole amount of the wage bill and in the other it is greater than the difference.

The COMMISSIONER: So far as Great Britain is concerned, the basis is the cost of production, of which the wage bill is only a part.

Mr. KELLOCK: That is exactly what I am saying, My Lord, it is only a part of our costs. Now on page 58 my friend attempts to make the same argument with regard to the Canadian mill spreads by comparing them with the English mill spreads--Exhibits 857 and 859. There is no evidence at all that at this time there was any profit involved in United Kingdom mill spreads, and Your Lordship will recall that in my factum I pointed out the history of the British cotton industry, covering this period when the mills were going out of business.

The COMMISSIONER: Where does that appear ?

Mr. KELLOCK: It is in paragraph 19 of section 8.

The COMMISSIONER: But where is the pragraph on page 58 to which you refer ? It is at the bottom of the page ?

Mr. KELLOCK: Yes. I refer Your Lordship to section E of my factum, paragraph 19. I submit it is shown there that there was very little if any profit in the English mill spreads at that time, and on the

other hand, with regard to the majority of the mills, there must have been heavy losses. There is a minor point on page 59 to which I would refer Your Lordship. In the first complete sentence on that page my friend says:

"A study of this exhibit indicates that the Canadian manufacturer followed the cost of yarn imported from Great Britain very closely in fixing the prices to the consumers of yarn in Canada."

The COMMISSIONER: Which exhibit is he referring to in that sentence ?

Mr. KELLOCK: He is referring there to Exhibit 857. Now, if you just analyze the different duties in Exhibit 857, you will find that there were seventeen commodities on which the Canadian price was ~~higher~~ lower than the English price and twenty-seven commodities on which the Canadian price was higher; and if there is anything at all in the contention that the prices did approximate at any time, then in so far as the period since 1932 is concerned, it does show that with regard to this particular yarn the intent of the agreement of 1932, that there should be reasonable competition on the basis of relative costs of production, was effectuated so far as this particular yarn is concerned. But in the majority of cases, in that particular exhibit, Your Lordship will see that the Canadian mills were not able to meet the English price.

Mr. McRUER: You must not forget freight and

other hand, with regard to the majority of the mills, there must have been heavy losses. There is a minor point on page 39 to which I would refer Your Lordship's in the first complete sentence on that page by which we:

"... Canadian manufacturer followed the cost of yarn imported from Great Britain very closely in his [illegible] the [illegible] of [illegible] is [illegible]

The Chairman: Which exhibit is he referring to in that sentence?

Mr. Aylesworth: He is referring there to Exhibit [illegible], if you just analyze the different prices in Exhibit [illegible], you will find that [illegible] conditions on which the Canadian price was higher; and if there is anything at all in the contention that the prices did accommodate at any time, then in so far as the [illegible] of the agreement of 1898, that there should be reasonable competition on the basis of relative costs of production, was effectuated so far as this particular yarn is concerned. But in the majority of cases, it was [illegible], Your Lordship will see that the Canadian mills were not able to meet the English price.

Mr. [illegible]: [illegible]

transportation. These prices do not include these items in the English price.

Mr. KELLOCK: Quite so. In the case of Exhibit 858, in every instance the Canadian price is higher.

Mr. McRUER: Just about the equal of the freight and transportation plus the British price.

Mr. KELLOCK: That is what you say. I say that an analysis of the exhibit shows that in every case the Canadian price is higher and in many cases substantially higher, and I have just plotted a chart in pencil to illustrate the point.

The COMMISSIONER: What are you referring to now ?

Mr. KELLOCK: My last remark is directed at 858. I have plotted a graph to show the story with regard to Exhibit 857, which deals with super hosiery yarn. In this graph I have one cent, two cents, and three cents below and one, two and three cents above. The graph goes from three cents below up to two cents above, down to something below the English price and up again to almost three cents, down and up, finally getting above three. If Your Lordship will look at the graph you will see that it did not follow the English price at all.

The COMMISSIONER: Where is this taken from ?

Mr. KELLOCK: It is taken from Exhibit 857.

The COMMISSIONER: You had better put it in.

Mr. KELLOCK: I will let my friend have a copy of it.

The COMMISSIONER: That will be marked 1350.

transportation. These prices do not include these items in the retail price.

Mr. MILLSON: Quite so. In the case of retail [illegible], in every instance the retailer makes is higher.

Mr. [illegible]: Does such the cost of the freight and transportation, plus the retail price.

Mr. MILLSON: That is what you say. I are that a analysis of the exhibit shows that in every case the retailer price is higher and in many cases substantially higher, and I have just selected a chart to demonstrate illustrate the point.

The [illegible]: What are you referring to now?

Mr. MILLSON: My last remark is directed at me. I have plotted a graph to show the story with regard to exhibit 307, which deals with sugar industry [illegible]. In this graph I have one cent, two cents, and three cents below and one, two and three cents above. The graph goes from three cents below to two cents above; [illegible] to correspond below the exhibit; [illegible] above times. If [illegible] that [illegible] [illegible].

The [illegible]: Where is this taken from?

Mr. MILLSON: It is taken from exhibit 307.

The [illegible]: You had better put it in.

Mr. MILLSON: I will let my friend have a copy of it.

The [illegible]: [illegible]

EXHIBIT 1350: Graph prepared from Exhibit 857.

The COMMISSIONER: What do you show by this exhibit ?

Mr. KELLOCK: It shows that the Canadian price did not follow the English price. The English price is indicated by the red line running straight across the page in the centre. It is the English price plus the duty and the excise.

The COMMISSIONER: What does the other line indicate?

Mr. KELLOCK: That shows the Canadian selling price. It does not indicate that it follows very closely the English laid down price. On page 59, in the last two paragraphs, my friend says:

> "There seems to be no apparent reason why the duties were increased in 1930 on yarns to weavers while there were no increases on the duties on yarns for knitters when imported by manufacturers of knitted goods to be used in their own factories in the manufacture of knitted goods.
>
> The result was that the large manufacturers of yarns who were also weavers were given a virtual monopoly of the cotton yarn business of Canada."

Dealing for the moment first with the first paragraph, my instructions are that the explanation of that is that the French treaty, in the first place, in connection with knitted goods had a fixed rate, and in the second place, as a result of that, the British preferential rates could not be increased. If the British preferential and the spread between the British

preferential and the intermediate were to be maintained, and if there could be no increased protection given knitters, there could be no increase in duty on their raw material.

The COMMISSIONER: You say there was a fixed rate on knitted goods ?

Mr. KELLOCK: Under the French treaty there was a fixed rate on knitted goods.

Mr. McRUER: What about stockings ?

Mr. KELLOCK: I submit that if you are to maintain the spread between the British preferential and the intermediate you cannot increase the British preferential rate.

Mr. McRUER: But these yarns were hosiery yarns were they not ? Was there not a very drastic increase in stockings ?

Mr. KELLOCK: It is knitting yarns I am speaking of.

Mr. McRUER: But we were talking about hosiery yarns.

Mr. KELLOCK: If you could not increase the protection to the knitters you could not increase the duty on their raw material, which is yarn, and that is the reason there was no increase.

Mr. McRUER: But I was dealing with cotton hosiery yarns, and hosiery was increased, and later on knitted goods were increased as well.

Mr. KELLOCK: Hosiery yarns and knitting yarns are the same thing; hosiery is a technical term for it.

preferential and the into manufacture were to be maintained, and if there could be no increased protection given knitters, there could be no increase in duty on their raw material.

The CHAIRMAN: You say there was a fixed duty on knitted goods ?

Mr. KNIGHT: Under the French treaty there was a fixed duty on knitted goods.

Mr. [illegible]: What about woollens ?

Mr. KNIGHT: I submit that if you are to maintain the spread between the British preferential and the intermediate you cannot increase the British preferential duty.

Mr. [illegible]: But these yarns were hosiery yarns were they not ? Was there not a very drastic increase in duty ?

Mr. KNIGHT: It is knitting yarns I am speaking of.

Mr. [illegible]: But we were talking about hosiery yarns.

Mr. KNIGHT: If you could not increase the protection to the knitters you could not increase the duty on their raw material, which is yarn, and that is the reason there was no increase.

Mr. [illegible]: But I was dealing with cotton hosiery yarns, and hosiery was increased, and later on knitted goods were increased as well.

Mr. [illegible]: Knitted [illegible] and knitting yarns.

Mr. [illegible]: Hosiery is a knitted [illegible]

The COMMISSIONER: You have cited the French treaty to show that it prevented something being done. Did it have any effect on hosiery yarns ?

Mr. KELLOCK: It did this, My Lord. With regard to knitted goods there was a fixed rate and therefore you could not deal with that.

The COMMISSIONER: Are you excluding hosiery from knitted goods ?

Mr. KELLOCK:No, I am including hosiery.

TheCOMMISSIONER: Then Mr. McRuer says that the rates were increased. How do you reconcile that ?

Mr. McRUER: There was a specific duty placed on hosiery, which was reduced the other day.

Mr. KELLOCK: That is right; there was an increase on hosiery. But these knitting yarns which my friend speaks about are not limited to yarns for hosiery, they are yarns for all knitted goods.

The COMMISSIONER: With the exception of hosiery. Other knitted goods, with that exception, could not be touched by reason of the French treaty.

Mr. KELLOCK: That is the fact, My Lord.

Mr. McRUER: The French treaty had nothing to do with the yarns.

Mr. KELLOCK: I am explaining the reason why there could not be increased protection on yarns. In the first place you have to start with the fabrics, knitted goods themselves, because that rate was fixed by the French treaty

The COMMISSIONER: You are speaking of knitted goods

The CONVENTION: You have cited the French treaty of Utrecht of 1713 concerning taking down. Does it have any effect on hosiery yarns?

Mr. HARDING: It did this, I know. I did request to submitted goods a tariff was a fixed rate. The tariff you could not tell with that.

The CHAIRMAN: Use the ordinary measure between goods?

Mr. HARDING: I am including hosiery.

The CHAIRMAN: Then Mr. Palmer made that the duties were increased. How do you reconcile that?

Mr. HARDING: There was a specific duty placed on hosiery, which was reduced the other day.

Mr. KNOX: That is right; there was an increase on hosiery. But your statistics prove clear as crystal. Woven goods are not limited to yarns for hosiery, they are yarns for all knitted goods.

The CHAIRMAN: With the exception of hosiery, other knitted goods, with that exception, could not be produced in yarns of the finest kind.

Mr. HARDING: That is the fact, of course.

Mr. HARDING: The French treaty had nothing to do with the yarns.

Mr. HARDING: I am explaining that woven or knit could not be increased protection on yarns. In the first place we have to take care of the finer, which goes downwards, because knit goods are fixed by the [illegible] trade.

The CHAIRMAN: The [illegible] of knit goods

--not knitting goods.

Mr. KELLOCK: I am speaking of knitted goods, underwear and outerwear, and I say that if you are to maintain the spread between the British preferential tariff and the French treaty you cannot increase the British preferential rate.

The COMMISSIONER: Because you would widen the spread ?

Mr. KELLOCK: No, you would narrow it, because you bring the British preferential rate closer to the intermediate. If you increase the British preferential rate you narrow the spread.

The COMMISSIONER: I thought you were talking about increasing the preference.

Mr. KELLOCK: No My Lord; I was speaking of any increase in the rate. You could not increase the rate because the spread was fixed under the treaty; and therefore if you could not increase protection to knitters you could not increase the duty on their raw material, which is yarns, and that is why there was no increase on yarns at that time.

The COMMISSIONER: And you say that that did not affect hosiery ?

Mr. KELLOCK: My friend goes on to say in the last paragraph on page 59:

> "The result was that the large manufacturers of yarns who were also weavers were given a virtual monopoly of the ~~xxxx~~ cotton yarn business of Canada."

--not knitting goods.

Mr. KELLOCK: I am speaking of knitted goods, under-wear and outerwear, and I say that if you are to main-tain the spread between the British preferential tariff and the French tariff you cannot increase the British [illegible] duty.

[illegible]

Mr. KELLOCK: No, you would remove it, because you bring the British preferential rate closer to the latter [illegible]. If you increase the British preferential rate you narrow the spread.

The CONSULTANT: I thought you were talking [illegible].

Mr. KELLOCK: No, my lord; I was speaking of an increase in the rate. You could not increase the rate because the spread was fixed under the treaty; and therefore if you could not increase protection to knitters you could not increase the duty on their raw material, which is yarns, and that is why there was no increase on yarns at that time.

The CONSULTANT: And you say that this did not protect hosiery?

Mr. KELLOCK: My friend goes on to say in the next paragraph on page 52:

"The result was that the large manufacturers of yarns who were also weavers were given a virtual monopoly of the ~~www~~ cotton yarn business of Canada."

My submission is that the large manufacturers of yarns had no monopoly, and I have dealt with that subject.

Mr. McRUER: The large manufacturers of yarns were also weavers.

Mr. KELLOCK: Yes, that is right.

The COMMISSIONER: Name some of these companies for me ?

Mr. McRUER: Canadian Cottons, the Dominion Textile Cotton Company, the Wabasso Company and the Hamilton Cotton Company had the yarn agreement.

Mr. KELLOCK: The Hamilton company do not weave much.

Mr. McRUER: They are weavers.

Mr. KELLOCK: However, I have dealt with that situation in section E of my factum, at page 5. As to this question whether there was a monopoly in favour of the domestic manufacturers of yarns who were also weavers, I may point out in 1934 the imports were 18.4 per cent of the sail yarn market.

Mr. McRUER: Is that weavers' or knitters' yarn.

Mr. KELLOCK: It is all yarns.

Mr. McRUER: You are confusing two different things. I am talking about yarns for weavers, when I refer to monopolies.

Mr. KELLOCK: If my friend can separate the figures of these different yarns I should be glad to have them. He keeps on talking about yarns for threads and cannot give the figures because they are not

My submission is that the large manufacturers of yarns had no monopoly, and I have dealt with that subject.

Mr. MORDEN: The large manufacturers of yarns were also weavers.

Mr. FULLERTON: Yes, that is right.

The COMMISSIONER: Have some of these companies for me ?

Mr. [illegible]: [illegible] Cotton Company, the Kabenes Company and the Hamilton Cotton Company had the yarn agreement.

Mr. FULLERTON: The Hamilton company do not weave now.

Mr. MORDEN: They are weavers.

Mr. FULLERTON: However, I have dealt with that situation in section 5 of my factum, at page 5. As to this question whether there was a monopoly in favour of the domestic manufacturers of yarns who were also weavers, I may point out in 1934 the imports were 15.4 per cent of the said yarn market.

Mr. MORDEN: Is that weavers' or Britishers' yarn.

Mr. FULLERTON: It is all yarns.

Mr. MORDEN: You are confusing two different things. I am talking about yarns for weavers, when [illegible].

Mr. [illegible]: If my friend can separate the figures of these different yarns I should be glad to have them. He is keeping talking about yarns for threads and cannot give the figures because they are not

segregated.

Mr. McRUER: Yes, they are.

Mr. KELLOCK: Well, we have never had them. The imports of yarns in 1934, which would include these yarns, were 18.4 per cent of the sail yarn market.

The COMMISSIONER: Are you through with that point ?

Mr. KELLOCK: Yes, My Lord.

The COMMISSIONER: In the graph that you have put in, are these lines both in Canadian currency ?

Mr. KELLOCK: Yes, My Lord.

The COMMISSIONER: They are all reduced to Canadian currency ?

Mr. KELLOCK: Yes.

The COMMISSIONER: These are valuations for duty ?

Mr. KELLOCK: Is your Lordship referring to the English line ?

The COMMISSIONER: It would be the English line.

Mr. KELLOCK: The English line represents the United Kingdom selling price plus duty and excise, in Canadian currency.

Mr. Mc RUER: Without transportation ?

Mr. KELLOCK: Yes.

The COMMISSIONER: Very well; you may proceed.

Mr. KELLOCK: My friend has the same argument when he comes to deal with cotton fabrics.

The COMMISSIONER: Where ?

Mr. KELLOCK: At page 76 of his brief. I wish to call Your Lordship's attention to the situation

which exists with regard to importations of cotton fabrics. I have already called attention, in connection with yarns, to the fact that since 1932 in any event, the competition has come not from the United States but from Great Britain; and if I may be allowed to refer Your Lordship, with respect to fabrics, to the first statement which follows section E of my factum, Your Lordship will find the situation very clearly set out there.

From and after 1932 there was a switch from the United States, as a source of cotton fabrics, to the United Kingdom. Taking 1931--

The COMMISSIONER: Where do you find this ?

Mr. KELLOCK: It is at the foot of the page. The story in regard to fabrics will be found on the first half of the page. Take 1931, all cotton piece goods, which is the first line. The total imports were 75,601,000 square yards, and that was distributed in the following proportions: 27,781,000 from the United Kingdom, and 36,710,000 from the United States. The following year the total imports were 59,860,000, distributed in the following proportions: 27,238,000 from the United Kingdom and 26,678,000 from the United States. In 1933, the total imports were 68,688,000 and the distribution was in these proportions: 46,704,000 from the United Kingdom and 17,157,000 from the United States, and from all other sources, 4,827,000.

Your Lordship will see that the trend has

which exists with regard to importations of cotton fabrics. I have already called attention, in connection with yarns, to the fact that since 1908 in any event, the competition has come not from the United States but from Great Britain; and if I may be allowed to refer Your Lordship, with respect to fabrics, to the first statement which follows section E of my factum, Your Lordship will find the situation very clearly set out there.

From and after 1908 there was a switch from the United States, as a source of cotton fabrics, to the United Kingdom. Taking 1907--

The CONSULTANT: Where do you find this?

Mr. MCLOOK: It is at the foot of the page. The phrase is somewhat [illegible] which is the first line. The total imports were 75,801,000 square yards, and that was distributed in the following proportions: 27,721,000 from the United Kingdom, [illegible] from the United States. The following year the total imports were 88,840,000, distributed in the following proportions: 37,320,000 from the United Kingdom and 26,874,000 from the United States. In 1909, the total imports were 97,885,000 and the distribution was in these proportions: 40,704,000 from the United Kingdom and 17,177,000 from the United States, and from all other sources, 4,887,000.

Your Lordship will see that the trend has

overtaken the United States imports and gone very much in favour of the United Kingdom, and that accentuates itself in the following years. In 1934 the total imports were 80,461,000 square yards distributed as follows: 63,822,000 from the United Kingdom and only 12,622,000 from the United States. In 1935 the total imports were 76,258,000;from the United Kingdom 59,892,000 and from the United States 11,934,000. In 1936 the total imports went up to 97,071,000 square yards and the distribution was: 73,725,000 from the United Kingdom, and 16,483,000 from the United States, and from all other countries 6,863,000.

The story is exactly the same in every one of the different varieties of these piece goods, whether you take grey ~~unprinted~~ or bleached or printed piece dyed or yarn dyed. The figures are all there.

The object of the 1932 agreements was attained, and from that point on, increasingly, the competition came from the United Kingdom and not from the United States. And so far as grey clothes are concerned, if one looks at Exhibit 600, together with figures taken from Trade of Canada, in the year 1934 the imports from the United States in pounds were 2,708,000 and the exports of these same grey clothes from Canada, were 1,101,000 pounds.

The COMMISSIONER: Where did they go ?

Mr. KELLOCK: These were the industrial clothes that went out. The result of that was that 70 per cent of the grey cloth brought in from the United States in

overtaken the United States imports had gone very much in favour of the United Kingdom, and that accentuation itself in the following years. In 1926 the total imports were 60,461,000 square yards distributed as follows: 28,[illegible],000 from the United Kingdom and 12,[illegible],000 from the United States. In 1929 the total imports were 76,[illegible],000; from the United Kingdom 28,[illegible],000 and from the United States 13,[illegible],000. In 1930 the total imports went up to 97,[illegible],000 square yards and the distribution was: 38,[illegible],000 from the United Kingdom, and 16,[illegible],000 from the United States, and from all other countries [illegible],000.

The great increase in [illegible] is of the different varieties of brown cloth goods, whether you take grey, [illegible], or bleached or painted goods and or yarn dyed. The figures are all there.

The output of the 1930 experience was stunning, and from that point on, increasingly, the competition came from the United Kingdom and not from the United States. [illegible] in fact grey cotton goods [illegible], it was looks at midnight 800, however did a figures based from India of January, in the year from the imports from the United Kingdom in January were 2,[illegible] and the exports of these same grey cotton from January were 1,[illegible] yards.

The [illegible]: where did they go?

Mr. [illegible] from the International [illegible] that went out. The result of that was that 90 per c of the grey cloth brought in from the United States

1934 was for re-export, subject to drawback, but paying no duty whatever. Therefore my submission with regard to cotton fabrics is the same as with regard to cotton yarns--that the British preferential rates are the ones to look at, and that these hypothetical examples which were put in, and which my friend refers to as duties that would have been paid on imports from the United States, are not of very much value, because the competition came and continues to come from the United Kingdom.

(17145 follows)

1914 was for re-export, subject to drawback, but paying no duty whatever. Comparing my substitution with respect to cotton fabrics is the same as with respect to cotton yarns--that the British preferential rates are the ones to look at, and that these hypothetical examples which were put in, and which my friend refers to as a time that will have been paid on imports from the United States, are not of very much value, because the competition came and continues to come from the United States.

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-- On resuming at 12 P.M.

MR. KELLOCK: My lord, I just wanted to point out in regard to the action that might be taken from time to time under Section 362 of the Customs Act. That has never been done according to my instructions as between here and the United Kingdom, and so far as Section 43 is concerned ---

THE COMMISSIONER: Do you have in mind now any case where it ought to have been done?

MR. KELLOCK: No, just as a matter of history and Section 43 it has been rarely applied as against the United Kingdom, one or two cases.

Your lordship enquired at one stage of the argument when my friend was addressing you as to the remedy which importers had in connection with appraisals, and dissatisfaction and that sort of thing, and I have just analysed that shortly - I should just like to give your lordship a note of it.

THE COMMISSIONER: It is not in your Factum?

MR. KELLOCK: No, it arose during the argument of my friend.

THE COMMISSIONER: I wonder where that would come?

MR. McRUER: It is principally in connection with the organization of the industry.

MR. KELLOCK: It comes logically I think in connection with my friend's brief from pages 61 to 75 where he discussed certain sections of the Customs Law relating to valuations, &c., sections 35 to 43. I think it

-- On resuming at 12 p.m.

MR. MALLOCH: My lord, I just wanted to point out in regard to the section that might be taken from time to time under section 303 of the Customs Act. That has never been done according to my instructions as between here and the United Kingdom, and so far as section 42 is concerned ---

THE COMMISSIONER: Do you have in mind any case where it ought to have been done?

MR. MALLOCH: No, just as a matter of history and section 42 is here been rarely applied as applied the United Kingdom, one or two cases.

Your lordship supplied at the beginning of the proceedings my friend was addressing you as to the fraud importers had in connection with [illegible], but the construction and that went on table, and I have just analysed that shortly - I should just like to give your lordship a note of it.

THE COMMISSIONER: It is not in your factum?

MR. MALLOCH: No, it arose during the argument of my friend.

THE COMMISSIONER: I wonder there is it could come.

MR. [illegible]: It is principally in connection with the organization of the industry.

MR. MALLOCH: It comes logically I think in connection with my friend's brief from page 61 to 70 where he discussed certain sections of the Customs Law relating to valuations, &c., sections 35 to 42. I think it

it probably comes in there. What I wanted to point out to your lordship was when importers are not satisfied with any appraisal or duty rate which is held applicable or fixed valuations, as a matter of practice they can first take the matter to the Commissioner of Customs and from there to the Minister if necessary, but in addition to that there is definite machinery---

THE COMMISSIONER: Are you talking about what an importer may do in a specific case?

MR. KELLOCK: Yes, if dissatisfied with any appraisal or any duty rate applicable to his import.

THE COMMISSIONER: Yes, of course he could have redress. I think the question was wider than that. The question was what means have importers of putting their case before the Government in respect to the tariff. We saw the other day where somebody tried to incorporate themselves into an association and were not allowed to do so. I do not know yet why.

MR. McRUER: I have that file, my lord.

THE COMMISSIONER: You need not take up any time in regard to individuals. He does not always get, though, what he applies for because Mr. McRuer told us of a case where importer had a clear right and he did not get it and was told to wait and the next session of Parliament legislated retroactively to make what had been illegal a legal one. However, the fact remains that certainly anybody who thinks he is being over assessed can have

it probably comes in there. What I wanted to point out to your Lordship was when importers are not satisfied with any appraisal or duty rate which is held applicable or fixed valuation, as a matter of practice they can first take the matter to the Commissioner of Customs and from there to the Minister if necessary, but in addition to that there is definite machinery.

THE CHAIRMAN: Are you talking about what an importer may do in a specific case?

Mr. MILLOY: Yes, if dissatisfied with any appraisal or any duty rate applicable to his invoice.

THE COMMISSIONER: Yes, of course he could have redress. I think the question was rather than that. The question was what kind of importers of machinery could come before the Government in respect to the duty or the other way where somebody tried to manipulate themselves into an arrangement and were not allowed to do so. I do not know yet why.

Mr. MILLOY: I have that file, my lord.

THE COMMISSIONER: You need not take up any time in regard to individuals. We does not matter, but it would be applies for instance. Someone told us of a case where importer had a clear right and he did not get it and was told to wait and the next session of Parliament legislated retroactively to make what had been illegal a legal one. However, the fact remains that certainly anybody who thinks he is being over assessed can have

recourse to the Department. There is then the machinery in the Customs Act. First is under Section 52, there is provision there for an arbitration board.

THE COMMISSIONER: That is only to see whether the law has been properly applied.

MR. KELLOCK: That is correct. And further that can be taken right to the tariff board.

MR. HOOPER: No.

MR. KELLOCK: Under sub-section 4of section 38 it can be taken to the Tariff Board.

MR. HOOPER: It does not say so.

THE COMMISSIONER: Does that apply to any entries---

MR. KELLOCK: Applies to any appraisal, my lord, "except as in this Act otherwise provided, if the importer, owner, consignee or agent, having complied with the requirements of this Act, is dissatisfied with the appraisement made of any such goods by the appraiser.."

THE COMMISSIONER: There is no question about that, Any civilized country would have such a thing, otherwise you would be carrying on most outrageously. I do not think that is the question.

MR. KELLOCK: Here is what your lordship has in mind I think.

THE COMMISSIONER: What facilities those who suffer in their importations from the high tariff have to set their views before those who make the tariffs.

MR. KELLOCK: I want to give your lordship that.

resource to the Department. There is then the machinery in the Customs Act. First is under section 32, there is provision there for a substitution period.

THE COURT JUDGE: What is only to see whether the law has been properly applied.

MR. TUCKER: That is correct. And further that can be taken right to the Tariff Board.

MR. [illegible]

MR. MILLOCK: Under sub-section 4 of section 32 it can be taken to the Tariff Board.

MR. TUCKER: It does not say so.

THE COURT JUDGE: Does that apply to any [illegible]---

MR. MILLOCK: Applies to any [illegible], by land, except as in this act otherwise provided, if the importer, owner, consignee or agent, having complied with the requirements of this Act, is dissatisfied with the appraisement made of any such goods by the appraiser.

[illegible] any civilized country would have such a thing, otherwise you would be carrying on most outrageously. I do not think that is the question.

MR. MILLOCK: Here is what your lordship has in mind I think.

[illegible] in their importations from the high tariff have to set their views before those who make the tariff.

MR. MILLOCK: I want to give your lordship [illegible]

Exporters of other countries have strong organizations. In the first place there is the Manchester Chamber of Commerce, there is the Wool-Textiles Delegation, there is the Joint Committee of Cotton Trade Organization of Manchester, and there is the Federation of British Industry. These organizations are in close touch with their respective governments and are continually pressing for reduction in the Canadian Tariff --

THE COMMISSIONER: That is all under the Ottawa Agreement no doubt.

MR. KELLOCK: No.

THE COMMISSIONER: It sets up a tariff board to deal with them.

MR. KELLOCK: It sets up a tariff board to deal with anybody whether members of this organization or not.

THE COMMISSIONER: In the agreement itself, provides-

MR. KELLOCK: Yes, it does.

THE COMMISSIONER: It agrees that a Board would be created, which has been done, and that these bodies would apply to this Board.

MR. KELLOCK: These people apply and make their influence felt not only by direct application to the Tariff Board but by application to their own Governments and application here. As a matter of fact the President of the Bradford Chamber of Commerce that the 10% discount of the British Preferential was due to the activities of this particular organization. Then, my lord,

the Cotton Trade Organizations of Great Britain and the Federation of British Industries have resident representative in Canada to look after their interests in regard to Canada.

THE COMMISSIONER: Who are these?

MR. KELLOCK: The Cotton Trade Organizations - that is, Joint Committee of Cotton Trade Organization of Manchester and Federation of British Industries. They have resident representative here.

THE COMMISSIONER: The same man?

MR. KELLOCK: Yes.

THE COMMISSIONER: He resides in Ottawa?

MR. KELLOCK: Yes. There are other organizations such as British Manufacturers Agents Association. There are Agents of various British manufacturers here in Canada who are importers, selling British goods and they have their own association here, and I am instructed that when they are putting forward any publicity in connection with applications for reduction in tariff they always take the stand that it is on behalf of the consumers of Canada. They take a rather altruistic stand. Then there are representatives of other countries in Canada such as High Commissioners, Commercial Attaches, Trade Commissioners and Consuls, and they help importers bringing in goods from their respective countries, and also try to expend the trade of their country in Canada. Great Britain has a High Commissioner in Ottawa and Trade Commissioner in

the British Trade Associations or Great Britain and the Association of British Industries have resident representative in Canada to look after their interests in regard to Canada.

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Hon. CONSTITUTION: Who are these?

Mr. [illegible]: The Canada Trade Commissioners - that is, joint committee of Canada Trade Commission or Commerce and Federation of British Industries. They have resident representative here.

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Hon. [illegible]: Are you [illegible]

Mr. [illegible]: Yes.

Hon. [illegible]: Be resident in Ottawa?

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Mr. [illegible]: Yes. There are other organizations such as British Manufacturers Agents Association. There are agents of various British manufacturers here in Canada who are importers, selling British goods and they have their own association here, and I am instructed that when they are putting forward any policy in connection with applications for reduction in tariff they always take the ground that it is on behalf of the consumers of Canada. They have a rather altruistic ground. Then there are representatives of other countries in Canada such as High Commissioners, Commercial Attaches, Trade Commissioners and Consuls, and they help importers bringing in goods from their respective countries, and also try to extend the trade of their country in Canada. Great Britain has

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Ottawa and in Toronto, and in the Report of the Secretary of State for external affairs - that is, 1936 and our own Secretary of State - appendix E, it is shown that foreign countries have resident consular officers in 36 cities in Canada, and appendix C, that there are 134 of who are citizens of their own respective countries, and not engaged in any other business except their Consular duties. Then, my lord,---

THE COMMISSIONER: You are talking of Consuls now?

MR. KELLOCK: Yes.

THE COMMISSIONER: They have nothing to do with matters of trade.

MR. KELLOCK: Yes. They assist their own nationals and also in connection with imports.

THE COMMISSIONER: I know a couple of them out in the West. I do not know of any activities of that sort.

MR. KELLOCK: I am instructed that they do. Then the largest individual importers into Canada are the big departmental stores and chain stores, and three of these merchandising units, according to the Price Spreads Report, page 25, have combined net assets of $186,000,000. Now, the total combined capital of the 500 Primary Textile mills in Canada is $237,000,000.

MR. McRUER: So that the retail trade is a very important thing in Canada then.

MR. KELLOCK: The largest importing companies have buying branches abroad of their own and have very competent tariff men right here in Canada to handle their

Ottawa and in Toronto, and in the Report of the Secretary of State for external affairs - that is, Line and our own Secretary of State - appendix 4, it is shown that foreign countries have resident consular officers in 56 cities in Canada, and appendix 6, that there are 144 of who are citizens of their own respective countries, and not engaged in any other business except their consular duties. Just, as I say,---

THE COMMISSIONER: You are talking of Consuls now?

MR. MERLOCK: Yes.

THE COMMISSIONER: They have nothing to do with matters of trade.

MR. MERLOCK: Yes. They assist their own citizens and also in connection with immigrants.

THE COMMISSIONER: I know a couple of them are in the east. I do not know of any activities of that sort.

MR. MERLOCK: I am instructed that they do. Then the largest individual importers into Canada are the big department stores and chain stores, and three of these merchandising units, according to the Prices Spreads Report, page 55, have combined net assets of $165,000,000. Now, the total combined capital of the 500 Primary Industries in Canada is $427,000,000.

MR. MORDEN: So that the retail trade is a very important and thriving business.

MR. MERLOCK: Yes. A very important and thriving business abroad of their own and have very [illegible] right here in Canada to handle their

imports and make any representation to the government about customs regulations or tariff rates if necessary. Then ---

THE COMMISSIONER: You refer to Eaton's and Simpson's?

MR. KELLOCK: The Hudson Bay Company and the chain stores, my lord. Then the importers generally have at their service in dealing with customs regulations the very highly specialized knowledge of license customs brokers who pay a fee to the Dominion Government, I think it is $50.00 apiece, and whose business of course is to facilitate imports because they make their living on the fees in clearing ---

THE COMMISSIONER: But they have nothing to do with advocating tariffs.

MR. KELLOCK: No, just inclearing. There is about 150 of those ---

THE COMMISSIONER: I do not see what these have to do with the tariff at all. He is there to facilitate business through the Customs. What has he to do with approaching the government in getting duties lowered?

MR. KELLOCK: I do not think they do that. They have a good deal to do though in regard to making their views known about customs regulations and that sort of thing.

THE COMMISSIONER: They would be out of business if this was a ~~gree~~ free trade country.

MR. KELLOCK: They would, my lord. Of course

imports and make any representation to the government about customs regulations or tariff rates if necessary. Then ---

THE COMMISSIONER: You refer to Eaton's and Simpson's?

MR. KELLOCK: The Hudson Bay Company and the Orkin [illegible], and both. They had importers generally [illegible] the very highly specialized knowledge of licenses or [illegible] brokers who pay a fee to the Dominion Government, I think it is $50.00 a year, and whose business of course is to facilitate imports because they make their living on the fees in clearing ---

THE COMMISSIONER: But they have nothing to do [illegible] duty [illegible].

MR. KELLOCK: No, just incidental. There is about 150 of those ---

THE COMMISSIONER: I do not see what these have to do with the tariff at all. He is there to facilitate business through the Customs. What has he to do with approaching the government in getting decisions [illegible]?

MR. KELLOCK: I do not think they do that. They have a good deal to do though in trying to make their views known about customs regulations and that sort of thing.

MR. [illegible]: They [illegible] [illegible] [illegible] ---- [illegible].

one aspect of the discussion that came up here was as to the knowledge and the means of getting a knowledge of these various customs regulations. Now, these men are just immersed in that and they are holding themselves out as experts in that. Then there is the Canadian Importers and Traders Association with head office in Toronto and a branch in Montreal. That is the organization that my friend called your attention to the other day.

THE COMMISSIONER: Which are not allowed to incorporate?

MR. KELLOCK: They were not at one time but they are now.

THE COMMISSIONER: I thought this letter the other day ---

MR. McRUER: The letter said that they had been refused incorporation in 1933 but ---

THE COMMISSIONER: I thought it stopped there.

MR. McRUER: No, it said they made application in 1936 and were permitted to incorporate. They got their charter in 1936. I have the file downstairs as a matter of fact. I was going to draw one or two letters to your lordship's attention. The matter was referred to the Department of Trade and Commerce to know if they had any objection to their being incorporated and the Department of Trade and Commerce did write the Secretary of State pointing out the work that these people proposed to do was being done by Chambers of Commerce in the Dominion.

one aspect of the discussion that came up here was as to the knowledge and the means of getting a knowledge of these various customs regulations. Now, these men are just interested in that and they are holding themselves out as experts in that. Then there is the Canadian Importers and Traders Association with head office in Toronto and a branch in Montreal. That is the organization that my friend called your attention to the other day.

MR COMMISSIONER: Which are not allowed to incorporate.

MR. MILLSON: They were not at one time but now they are.

THE COMMISSIONER: I thought this letter the other day ---

MR. MONTGOMERY: The letter said that they had been refused incorporation in 1926 but ---

THE COMMISSIONER: I thought -- [illegible]

MR. MONTGOMERY: No, it said they made application in 1926 and were permitted to incorporate. They got their charter in 1926. [illegible] as a matter of fact. I was going to draw one of two letters to your Lordship's attention. The matter was referred to the Department of Trade and Commerce to know if they had any objection to their being incorporated and the Department of Trade and Commerce did write the secretary of state pointing out the work that the [illegible] proposed to do [illegible]

THE COMMISSIONER: That was nobody's business.

MR. KELLOCK: They are incorporated now.

Then, my lord, I think that covers that subject.

Now, I want to say a word or two in regard to my friend's section on Artificial silk, woven fabrics, which start at 92, and at the foot of 93 my friend refers to Exhibit 866 which sets out 12 rayon fabrics and the first two of those fabrics my friend says are sold in the United States, having a cotton warp and a rayon filling.

THE COMMISSIONER: Where is this?

MR. KELLOCK: At the foot of Page 93. And over the page, the second sentence down he says: "These two fabrics have special interest in this investigation on account of the fact that the corresponding Canadian fabric is the Ming Toy fabric of the Montreal Cottons Limited, which, it is said, competes with the 27" rayon taffeta being imported from Japan." Now, my lord, the Ming Toy fabric, that is 27" taffeta we have heard so much about, that is all rayon. There is no cotton in it and my submission is that you cannot compare the first two fabrics on 866, they are not corresponding fabrics at all, they have a cotton warp, and when it is suggested that all you have to do is, as was suggested by Mr. Hooper, all you have to do is to add the extra cost of the rayon yarn over and above the cotton ---

MR. HOOPER: No, I did not say that at all.

THE COMMISSIONER: That's one nobody's business.

MR. HOOPER: They are immaterial, sir.

THE COMMISSIONER: Then, my lord, I think that covers that subject.

MR. HOOPER: Now, I want to say a word or two in regard to my friend's section on Artificial silk, woven fabrics, which start at 95, and at the foot of 98 my friend refers to Exhibit 886 which sets out 12 rayon fabrics and the first two of those fabrics my friend says are sold in the United States, having a cotton warp and a rayon filling.

THE COMMISSIONER: Where is that?

MR. HOOPER: At the foot of page 98. And over the page, the second sentence down he says: "These two fabrics have special interest in this investigation on account of the fact that the corresponding domestic is the Mine Toy fabric of the Montreal Cottons Limited, which, it is said, competes with the 27" rayon taffeta being imported from Japan." Now, my lord, the Mine Toy fabric, that is 27" taffeta we have heard so much about, that is all rayon. There is no cotton in it and my submission is that you cannot compare the first two fabrics on 886, they are not corresponding fabrics at all, they have a cotton warp, and when it is suggested that all you have to do is, as was suggested by Mr. Hooper, all you have to do is to put the extra coat of the rayon yarn over and above the cotton ---

MR. HOOPER: No, I did not say that at all.

30 cents takes in more than just the cost of the rayon yarn by a long way.

MR. KELLOCK: Perhaps we had better look at the evidence, 11977.

MR. McRUER: Cannot get over the fact that it was reduced in price after the Japanese fabric came in.

MR. KELLOCK: What my friend said,-apparently this point was not introduced until the Exhibit was put in-top of page 11977, line 2:

"MR. McRUER: My lord, Mr. Hooper has just pointed out to me in reference to Exhibit 866 that the first two items on that Exhibit dealing with the American fabric, that the American fabric has a cotton warp in it and there should be a correction in the exhibit because it is not comparable to the Canadian exhibit, which is all rayon. So that I am asking him to make a proper note on the exhibit. He wants to work it out.

THE COMMISSIONER: Doesthat apply to all of these?

MR. McRUER: No, just the first two.

THE WITNESS: The difference in price would be approximately 30 cents.

MR. McRUER: That would be between the cost of the rayon warp and the cotton warp. It would bring it up to about $1.27 a pound? A. You would have to find out what percentage of cotton and rayon in there but it would bring it around in line with the other fabrics, about $1.27, taking

30 cents cents in more than just the cost of the rayon yarn by a long way.

Mr. [illegible]: Perhaps we had better look at the evidence, 1177.

Mr. Menlow: Cannot get over the fact that it was reduced in price after the Japanese fabric came in.

Mr. Gillon: When my friend said, apparently this point was not introduced until the Exhibit was put in-

top of page 1177, line 3:

"Mr. Menlow: My lord, Mr. Cooper has just pointed out to me in reference to Exhibit 400 that the first two lines on that exhibit dealing with the [illegible], and the [illegible] [illegible] [illegible] cotton warp in it and there would be a correction in the exhibit because it is not comparable to the Canadian exhibit, which is all rayon. So that I am asking him to make a proper note on the exhibit. He wants to work it out.

The Chairman: Does that apply to all of these?

Mr. Menlow: No, just the first two.

The Chairman: The difference in prices would be approximately 30 cents.

Mr. Menlow: That would be between the cost of the rayon warp and the cotton warp. It would bring it up between [illegible] [illegible] [illegible] have to find out what percentage of cotton and rayon in there but it would bring it around in

into account 120 denier yarn being used.

Q. Which is the more expensive, the cotton or the-

A. The rayon is more expensive. It would not be over 30 cents."

My submission about that is that you cannot take an article made partly of cotton and partly of rayon and add something to it to cover the difference because in addition to the difference in the yarn my instructions are that it might be an entirely different method of manufacture and that you cannot say that those two fabrics are corresponding fabrics to the domestic fabric made entirely of rayon, and attempt to equate the difference simply by adding 30 cents a pound for the yarn to it or any other figure. If you are going to compare the two figures you have to find the two fabrics and compare them as to the selling prices at which they are sold and that is what the exhibit tries to do on those 12 fabrics - to compare the United States and Canadian selling prices and see how close they are. Then because this exhibit is used as a basis for thd argument that the selling prices of the Canadian Ming Toy fabrics are too high, I submit you cannot take an entirely different fabric and add something to it and say that it is the same and should have been sold at the same price.

Then, my lord, at page 97, foot of page 98,

the argument starts - my friend refers to the evidence of Mr. Switzer where he is dealing with natural silk fabrics and the intense internal competition in Canada and that combined with the low price of raw silk has resulted in the reduction of 55% in the domestic selling prices in Canada, and then my friend goes on at the foot of page 96 to say:

"It must be borne in mind that judging from the history of the textile industry in Canada, internal competition from a number of independent mills has been gradually eliminated in other branches of the industry by mergers, amalgamations and trade agreements. It may, therefore, be assumed that as the purchasing power of the consumer in Canada increases, the prices will increase and steps will be taken to recast the competitive situation in the industry, unless it is subjected to competition from abroad."

THE COMMISSIONER: I suppose he means it may therefore be apprehended.

MR. KELLOCK: It is a little clairvoyance that my friend is indulging in.

MR. McRUER: I am only trying a basis for what I think you can expect in the future.

MR. KELLOCK: I think my friend can smell out a combine a long piece ahead.

MR. McRUER: Some of them smell pretty badly, I admit that.

[illegible] - [illegible] of a [illegible]
of Mr. Bulmer there so he dealing with natural silk
fibres and the international competition in cotton
and that combined with the low price of rayon silk
has resulted in the reduction of 50% in the domestic
selling prices in Canada, and then my friend goes on
[illegible] that of page 68 to say:

"[illegible]

[illegible] the history of the textile industry [illegible]
international competition. From a number of independent
mills has been gradually eliminated [illegible]
[illegible]
[illegible]
assumed that as the purchasing power of the
[illegible]
increase and scope will be taken to secure the
competitive situation in the industry, unless it
is subjected to competition from abroad."

[illegible]: I suppose he means it may therefore
[illegible] be increased.

Mr. [illegible]: [illegible] my
friend is indulging in.

Mr. [illegible]: I am only trying [illegible]
which you [illegible] in the [illegible].

Mr. [illegible]: I THINK [illegible]
[illegible] is a long [illegible].

Mr. [illegible]: [illegible]
[illegible] work.

MR. KELLOCK: Then, my lord, from page 98 on my friend deals with rugs and blankets and he speaks about cotton and woollen blankets, but the illustration, Exhibit 871, is not a woollen blanket at all, it is a cotton blanket. Any wool in it is around 5%. So that you cannot call that a woollen blanket in any way and my friend does not deal with woollen blankets as such, and my submission is that the United States has never been regarded as a source of woollen blankets. Great Britain is and Canada is, and perhaps I may be allowed to say that since the regulation - which is not so new as far as the United States is concerned - permit tourists from the United States in Canada to take back with them $100 worth of goods, that blankets are a very favorite item of purchase which indicates, in my submission, that the price here and the supply here are both much more favourable than they are in the United States so far as woollen blankets are concerned, and that the woollen blanket competition comes from Great Britain. Now, my lord ---

MR. McRUER: I have not contended against that.

MR. KELLOCK: You have not - well, all right. Well, I pass over to the next Section, page 207, my friend is dealing with knitted goods. I want to deal particularly with this wool jersey cloth which my friend refers to in the middle of the page there.

THE COMMISSIONER: Well, we had better take that up at half past two.

-- The Commission adjourned at 12.30 to resume at 2.30.

MR. KELLOGG: Then, my lord, from page 40 of my friend's
book with rugs and blankets and he speaks about cotton
and woollen blankets, but the illustrator, I think it
is not a woollen blanket at all, it is a cotton blanket.
My wool in it is around 3%. So that you cannot call
that a woollen blanket in any way and my friend does
not deal with woollen blankets as such, and my con-
clusion is that the United States has never been regard-
ed as a source of woollen blankets. Great Britain
is and Canada is, and perhaps I may be allowed to say
that since the negotiation - which is not so new as
far as the United States is concerned - permit coming
from the United States in Canada to take back with
them $100 worth of goods, that blankets are a very
favorite item of purchase which indicates, in my
submission, that the price here and the supply here
are both much more favourable than they are in the
United States so far as woollen blankets are concerned,
and that the woollen blanket competition comes from
Great Britain. Now, my lord ---

MR. MORAN: I have not contradicted that.

MR. KELLOGG: You have not - well, all right.
Well, I pass over to the next section, page 207, my
friend is dealing with British goods. I think it
deal particularly with this wool jersey cloth which
my friend refers to in the middle of the page there.

[illegible]

[illegible]

AFTERNOON SESSION

-- On resuming at 2.30 p.m.

ARGUMENT BY MR. KELLOCK, K.C.(Resumed):

My lord, at page 107 of his brief my friend refers to an appraisers' bulletin which was issued --

THE COMMISSIONER: To what?

MR. KELLOCK: An appraisers' bulletin based on an Order-in-Council under the provisions of section 43, of June 7, 1932.

THE COMMISSIONER: That is the one we heard so much about.

MR. KELLOCK: Yes, my lord, relating to wool jersey --

THE COMMISSIONER: Under 36(2).

MR. KELLOCK: Under 43, my lord. Under that 25 cents a pound was added to the invoice value of invoices of wool stockinette.

THE COMMISSIONER: Or what?

MR. KELLOCK: I am sorry, wool jersey cloth, 25 cents a pound. Now, my lord, the imports of wool jersey cloth from Great Britain from Trade of Canada are as follows: -- and I have to give it in dollars because the same unit --

THE COMMISSIONER: Imports of wool --

MR. KELLOCK: Imports of wool jersey cloth.

THE COMMISSIONER: From Great Britain.

MR. KELLOCK: From Great Britain. In 1930 they were $29,494, and from the United States, my lord,

-- Un resuming at 2.30 p.m.

ARMOUR K.C., (Counsel, Ld.Commissioner):

My lord, at page 107 of his brief my friend refers to an exchange Bulletin which was issued --

THE COMMISSIONER: To what?

MR. WINDSOR: An exchange Bulletin based on an Order-in-Council under the provisions of section 42, of June 7, 1932.

THE COMMISSIONER: That is the one we heard so much about.

MR. WINDSOR: Yes, my lord, relating to wool jersey --

THE COMMISSIONER: Under 42(1).

MR. WINDSOR: Under 42, my lord. Under the 25 cents a pound was added to the invoice value of invoices of wool otomanette.

THE COMMISSIONER: Is that

MR. WINDSOR: I am sorry, wool jersey cloth, 25 cents a pound. Now, my lord, the importe of wool jersey cloth from Great Britain from Trade of Canada are as follows: -- and I have to give it in dollars because the same unit --

THE COMMISSIONER: Imports of wool --

MR. WINDSOR: Imports of wool jersey cloth.

THE COMMISSIONER: From Great Britain.

MR. WINDSOR: From Great Britain. In 1929 they were $24,444, and from the United States, my lord,

at the same time --

THE COMMISSIONER: $29,000?

MR. KELLOCK: $29,494, and from the United States $6,668. 1931, from Great Britain $37,951 and from the United States $6,607. 1932 from Great Britain $146,376 and from the United States $5,640.

THE COMMISSIONER: How much?

MR. KELLOCK: $5,640.

THE COMMISSIONER: There is a remarkable change there in one year.

MR. KELLOCK: The preceding year was sixty-six hundred.

THE COMMISSIONER: I thought you said sixty-six thousand.

MR. KELLOCK: No, my lord, $6,607, and 1930 the United States is $6,668. In 1933 from Great Britain $151,895 and from the United States $12,707. 1934 from Great Britain $20,097 --

THE COMMISSIONER: Is that a fall from $151,000 to $20,000?

MR:. KELLOCK: Yes, my lord.

MR. McRUER: That is after this valuation went into effect.

MR. KELLOCK: The valuation went into effect in 1932.

THE COMMISSIONER: $20,000?

MR. KELLOCK: $20,097.

THE COMMISSIONER: It went into effect when, in 1932?

MR. KELLOCK: The 7th of June, 1932.

at the same time --

THE COMMISSIONER: $29,000?

MR. ALLCOCK: $22,424, and from the United States $6,668. 1931, from Great Britain $27,951 and from the United States $6,607. 1932 from Great Britain $146,376 and from the United States $5,640.

THE COMMISSIONER: Thirty-one thousand dollars.

MR. ALLCOCK: $31,640.

THE COMMISSIONER: There is a remarkable change there in one year.

MR. ALLCOCK: Yes, sir, and it is very-very marked.

THE COMMISSIONER: I thought you said sixty-six thousand.

MR. ALLCOCK: No, sir, $6,607, and 1930 the United States is $6,668. In 1932 from Great Britain $131,895 and from the United States $12,767.

THE COMMISSIONER: Is that a fall from $131,000 to $30,000?

MR. ALLCOCK: Yes, sir, sir.

MR. MORROW: That is after this valuation was put into effect.

MR. ALLCOCK: The minimum was then arrived at.

THE COMMISSIONER: Thirty-one?

MR. ALLCOCK: $31,647.

THE COMMISSIONER: It was then [illegible], is that?

MR. ALLCOCK: Yes, sir, sir.

MR. McRUER: This would be due to the rise in value of the pound, no doubt. You see the pound was down in 1932, and 1933.

THE COMMISSIONER: Yes, but was there not a currency duty against it then?

MR. KELLOCK: There was for a short time.

MR. McRUER: A currency of $4.40, but by 1934 I think it had gone up above $4.40.

MR. KELLOCK: 1933 that happened; we have had that history.

MR. McRUER: It rose in 1933. This would be the fiscal year ending March 31, 1934, or the calendar year?

MR. KELLOCK: The fiscal year.

MR. McRUER: So that would reflect the rise in value of the pound probably. I beg your pardon, did you give us the United States in 1934?

MR. KELLOCK: I am just going to give that. 1934 from the United States $12,947. 1935 from the United Kingdom $48,033 and from the United States $3,874. 1936 from the United Kingdom $87,743 and from the United States $5,484. Now, your lordship will see that there is a very heavy increase in the year 1932 over 1931.

THE COMMISSIONER: Yes, very heavy.

MR. KELLOCK: And that was at a time when price was going down so there was in addition to that a heavy -- a much heavier physical volume than the dollar figures reflected. What happened, my lord,

MR. McGUIGAN: This would be due to the rise in value of the pound, no doubt. You see the pound was down in 1932, and 1933.

THE COMMISSIONER: Yes, but was there not a customs duty applied it then?

MR. McGUIGAN: Yes, but [illegible]

MR. McGUIGAN: A customs of $4.40, but by 1934 I think it had gone up above $4.40.

MR. KELLOCK: 1933 that happened; we have had that history.

MR. McGUIGAN: It rose in 1933. This would be the fiscal year ending March 31, 1934, or the calendar year?

MR. KELLOCK: The fiscal year.

MR. McGUIGAN: So that would reflect the rise in value of the pound probably. I beg your pardon, did you give us the United States in 1934?

MR. KELLOCK: I am just going to give that. 1934 from the United States $12,347. 1933 from the United Kingdom $48,033 and from the United States $3,874. 1936 from the United Kingdom $37,748 and from the United States $[illegible]. Now, your Lordship will see that there is a very heavy increase in the year 1932 over 1931.

THE COMMISSIONER: Yes, very heavy.

MR. KELLOCK: And that was at a time when price was going down so there was in addition to that a heavy -- a much heavier physical volume than the dollar figures reflected. What happened, my lord,

was that the domestic manufacturers asked that there should be an investigation by the Department of National Revenue, in Great Britain as to selling prices there in view of that tremendous change, and the Department carried out an investigation as a result of which they ordered that 25 cents a pound should be added to the invoice price.

THE COMMISSIONER: That is one time that section 43 was used against Great Britain.

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: Did the bulletin apply only to Great Britain?

MR. KELLOCK: No, it didn't, it applied to both.

THE COMMISSIONER: The United States and Great Britain.

MR. KELLOCK: Yes.

MR. McRUER: It evidently didn't affect the United States.

MR. KELLOCK: That is the point I am coming to, my lord; the United States imports are really negligible in comparison, and when my friend, at the foot of page 108, starts to give a hypothetical illustrations of what the effect of imports from the United States was I submit it is overlooking again where the real imports were coming from.

MR. McRUER: It would probably be very much exaggerated if we dealt with Great Britain.

MR. KELLOCK: No, I am going to deal with Great Britain to show you. The details of the investigation of the department were not made public, but judging

was that the domestic manufacturers asked that there should be an investigation by the Department of National Revenue, in Great Britain as to selling prices there in view of that tremendous change, and the Department carried out an investigation as a result of which they ordered that 25 cents a pound should be added to the invoice price.

THE COMMISSIONER: That is one time that anything was used against Great Britain.

MR. ALLCOCK: Yes, my lord.

THE COMMISSIONER: Did the bulletin apply only to Great Britain?

MR. ALLCOCK: No, it didn't, it applied to both.

THE COMMISSIONER: The United States and Great Britain.

MR. ALLCOCK: Yes.

MR. McKAY: It evidently didn't effect the United States.

MR. ALLCOCK: That is the point I am coming to, my lord; the United States imports are mostly manufactures in competition, and when my friend, at the foot of page 100, starts to give a hypothetical illustration of what the effect of imports from the United States was I submit it is overlooking again where the real imports are coming from.

MR. McKAY: It would probably be very much concerned if we really were dumping goods.

MR. COLDWELL: I am going to conclude my cross-examination in some time. The matter of the importations of the Government from non-duty goods, and leaving

from the result it must have been clear that these goods were being invoiced at 25 cents a pound less than they should have been.

MR. McRUER: Oh no, that is not right.

THE COMMISSIONER: That doesn't follow. Are any reports made in these cases, anything that would leave a trace of the reasons for it?

MR. KELLOCK: No, my lord, there is nothing given to the public at all.

THE COMMISSIONER: I am not talking of the public. But here is Mr. Hooper; he may be able to tell us about that. It is about this appraisers' bulletin of the 7th of June, 1932. It was the result of an investigation?

MR. HOOPER: The result of an application.

THE COMMISSIONER: There must have been some investigation after the application.

MR. McRUER: Mr. Kellock has just said there was an investigation in Great Britain which must have shown these goods were being imported into Canada at 25 cents less than they ought to have been.

THE COMMISSIONER: Pardon me a moment; Mr. Kellock said there was an investigation in Great Britain. Now, is there no evidence of any such investigation, Mr. Kellock?

MR. KELLOCK: No, there is no evidence here, my lord.

THE COMMISSIONER: I thought you said there was an investigation.

MR. KELLOCK: My instructions are there was an

investigation as a result of which this bulletin was put out.

THE COMMISSIONER: Can you tell us anything about that?

MR. HOOPER: We investigated the Canadian company --

THE COMMISSIONER: What Canadian company?

MR. HOOPER: The Canadian company selling wool jersey cloth.

THE COMMISSIONER: Selling British cloth?

MR. HOOPER: No, Canadian cloth. Stauffer-Dobbie in Galt I think were the applicants in this case. We found out what their selling price was and also the selling price of the imported goods and it was apparent from the two figures that the British goods were laid down much cheaper than the Canadian goods were selling for.

THE COMMISSIONER: Is that all?

MR. HOOPER: That is all.

THE COMMISSIONER: That was sufficient to put 25 cents extra on.

MR. HOOPER: Yes.

MR. McRUER: There was no investigation in Great Britain?

MR. HOOPER: No.

MR. McRUER: Of their costs of production or anything of that sort.

THE COMMISSIONER: Was it taken for granted that the Canadian company's prices were proper prices

investigation as a result of which this bulletin was put out.

THE COMMISSIONER: Can you tell us anything about that?

MR. MOORE: We investigated the Canadian [illegible] —

THE COMMISSIONER: What Canadian company?

MR. MOORE: The Canadian company selling wool [illegible].

THE COMMISSIONER: Selling cutting cloth?

MR. [illegible]: [illegible].

In fact I think were the problems in this case. [illegible] found out what their selling price was and also the selling price of the imported goods and it was apparent from the two figures that the British goods were sold down much cheaper than the Canadian goods were selling for.

THE COMMISSIONER: Is that all?

MR. MOORE: That is all.

THE COMMISSIONER: That was sufficient to put [illegible] [illegible].

[illegible].

MR. MORDEN: There was no investigation in Great Britain?

MR. MOORE: No.

MR. MORDEN: Of their costs of production or [illegible] that sort.

THE COMMISSIONER: Was it taken for granted [illegible] the Canadian company's prices were [illegible]

for the Canadian consumer? It must have been.

MR. HOOPER: It must have been, or they must have shown they were. The trouble was they had to import yarn, I believe, and there was a specific duty on yarn so of course they had to be taken care of. They had to import yarns from Great Britain and process the goods.

MR. McRUER: And pay a specific duty on the yarn.

MR. HOOPER: And pay a specific duty on the yarn.

MR. KELLOCK: Well, the Stauffer-Dobbie Company, I am instructed they spin their own yarn. They do not import it.

MR. HOOPER: Then, they must have used the wrong example.

THE COMMISSIONER: Must have used what?

MR. HOOPER: Must have used the wrong example.

THE COMMISSIONER: What do you mean by that?

MR. HOOPER: I remember perfectly well the costs they showed, the figures that were used showed costs of English yarns.

THE COMMISSIONER: Well, that perhaps might stand investigation.

MR. KELLOCK: It might. I cannot deal with that. I have no knowledge of it at all.

MR. McRUER: Well, it is apparently not correct that there was an investigation in Great Britain.

MR. KELLOCK: No.

MR. McRUER: And they found the yarns were selling 25 cents lower here than they ought to have been selling.

for the Canadian economy? It must have been.

MR. MORDEN: It must have been, or they must have alone they were. The trouble was they had to import yarn, I believe, and there was a specific duty on yarn so of course they had to be taken care of. They had to import yarns from Great Britain and process the goods.

MR. MARTIN: And pay a specific duty on the yarn.

MR. MORDEN: And pay a specific duty on the yarn.

MR. FLEMING: Well, the Stanfer-Dobbie Company I am interested they spin their own yarn. They do not import it.

MR. MORDEN: Then, they must have used the arrow cloth.

THE COMMISSIONER: Must have used what?

MR. MORDEN: Must have used the wrong example.

THE COMMISSIONER: What do you mean by that?

MR. MORDEN: I remember personally well the costs they showed, the figures that were used showed costs of English yarns.

THE COMMISSIONER: Well, that perhaps needs fuller investigation.

MR. MARTIN: I think. I cannot deal with that. I have no knowledge of it at all.

MR. McRUER: Well, it is apparently not correct that there was an investigation in Great Britain.

MR. MARTIN: No.

MR. McRUER: And they found the yarns were selling at much lower rates than they would have been selling.

MR. KELLOCK: According to what Mr. Hooper says, yes.

MR. McRUER: If what you say is true they would have taken action under 36(2).

MR. KELLOCK: It was taken under 43.

THE COMMISSIONER: 43 is the class that allows them to do anything for any reason.

MR. McRUER: If they are being imported into Canada to injuriously affect the sale of Canadian goods.

THE COMMISSIONER: You get away then from real market values in the producing country.

MR. KELLOCK: You may, under that section --

THE COMMISSIONER: That is what it is there for, I presume, because 36(2) is there for all other traceable purposes.

MR. KELLOCK: It covers specific cases of selling below cost of production, yes, my lord.

THE COMMISSIONER: And you must not assume there was any dumping here from Great Britain.

MR. KELLOCK: In view of that I cannot.

MR. HOOPER: There was no evidence of dumping.

THE COMMISSIONER: If there had been you would have proceeded under 36(2).

MR.HOOPER: Yes.

MR. KELLOCK: The thing I want to point out particularly, my lord, is that imports -- the principal point is that the imports of this stuff came from Great Britain, and it was as a result of what was

MR. ALLOUGH: According to what [illegible] may, yes.

MR. MORDEN: If that you [illegible] have taken action under 36(2).

MR. ALLOUGH: It was taken under 42.

THE COMMISSIONER: As in the clause that allows them to do anything for any reason.

MR. MORDEN: If they are being imported into Canada to injuriously affect the sale of Canadian goods.

THE COMMISSIONER: You get away then from real market value in the producing country.

MR. ALLOUGH: You say, under that section --

THE COMMISSIONER: That is what it is there for, I presume, because 36(2) is there for all other tradable purposes.

[illegible] specific cases of selling below cost of production, yes, my lord.

THE COMMISSIONER: And you do not assume there was any dumping here from Great Britain.

MR. ALLOUGH: In view of that I cannot.

MR. MORDEN: There was no evidence of dumping.

THE COMMISSIONER: If there had been you would have proceeded under 36(2).

MR. [illegible]: Yes.

MR. [illegible]: [illegible] -- [illegible] which is just the [illegible] [illegible] -- [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

happening with regard to imports from Great Britain that this action was taken, and that the imports of this particular article from the United States are negligible in comparison to the imports from the United Kingdom and it is not very helpful, as my friend does at the foot of page 108 of his brief --

MR. HOOPER: I think there is only one importer from Great Britain.

MR. KELLOCK: -- to indulge in illustrations of what would happen in connection with imports from the United States. Now, my lord, that is all I want to say.

MR. McRUER: I thought you said you were going to give us an example of what the comparison would have been. I suggest as far as the consumer was concerned he was injured more on the barrier placed between Canada and Great Britain, and when I deal with the United States example I deal with the least injurious one to the consumer, and I think you agree with me on that.

MR. KELLOCK: What do you mean least injurious?

MR. McRUER: The competition would have come from Great Britain.

MR. KELLOCK: The competition was coming from Great Britain.

MR. McRUER: Yes. My example deals with the United States where the competition was not coming from.

MR. KELLOCK: If you agree on that, alright.

MR. McRUER: Therefore the putting on of this

happening with regard to imports from Great Britain that this action was taken, and that the imports of this particular article from the United States are negligible in comparison to the imports from the United Kingdom and it is not very material, as my friend has at the foot of page 102 of his brief --

MR. MOFFAT: I think there is only one importer from Great Britain.

MR. ANDSON: -- to indulge in illustrations of what would happen in connection with imports from the United States. Now, my lord, that is all I want to say.

MR. MOFFAT: I thought you said you were going to give us an example of what the connection would have been. I suggest as far as the consumer was concerned he was injured more on the particular deal between Canada and Great Britain, and when I deal with the United States example I deal with the least injurious one to the consumer, and I think you agree with me on that.

MR. ANDSON: What do you mean least injurious?

MR. MOFFAT: The competition would have come from Great Britain.

MR. ANDSON: The competition was coming from Great Britain.

MR. MOFFAT: Yes. My example deals with the United States where the competition was not coming from.

MR. [illegible]: [illegible].

MR. [illegible]: [illegible]

fixed valuation must have injured the consumer more than is shown in my example; that is all.

MR. KELLOCK: All I am saying is the competition, as you say, did not come from the United States. These illustrations at the foot of 108 and 109 are not very helpful.

MR. McRUER: Well, it might have come from there but it did not get over the barrier.

MR. KELLOCK: I am not concerned with what might have been. It was not coming from there at the time and had not been coming since at least 1930, as compared to what was coming from the United Kingdom. Then, my lord, in connection with the opening part of my section in my factum with regard to tariffs I gave your lordship a table --

THE COMMISSIONER: What part is that?

MR. KELLOCK: Section "F". I gave your lordship a table which became exhibit 1342 showing the average duty rate on dutiable imports and on total imports, and the percentage of duty free imports, and your lordship expressed a desire that I should do the same thing with regard to the British preferential rates, and I have that now.

THE COMMISSIONER: Just a minute till I make sure of that; you are referring to what exhibit?

MR. KELLOCK: Exhibit 1342.

THE COMMISSIONER: That was textile imports, ad valorem averages. You took that from 1324.

MR. KELLOCK: 1324.

THE COMMISSIONER: Is this taken from another

fixed valuation must have injured the consumer more than is shown in my example; that is all.

MR. KILLOCK: All I am saying is the conventions, as you say, did not come from the United States. These illustrations at the foot of 108 and 109 are very helpful.

MR. McCORD: Well, it might have come from there but it did not get over the barrier.

MR. KILLOCK: I am not concerned with what might have been. It was not coming from there at the time and had not been coming since at least 1870, as compared to what was coming from the United Kingdom. Then, my lord, in connection with the concluding part of my section in my reply with regard to tariffs I gave your lordship a table --

THE COMMISSIONER: What part is that?

MR. KILLOCK: Section "F". I gave your lordship a table which showed that the average duty rate on dutiable imports and on total imports, and also provided that my industry, the industry, and your lordship expressed a desire that I should do the same thing with regard to the British preferential rates, and I have that now.

THE COMMISSIONER: Just a minute till I make sure of that; you are referring to what exhibit?

MR. KILLOCK: Exhibit 1434.

THE COMMISSIONER: Yes, I have it here somewhere.

MR. KILLOCK: Yes, it is the average. You took that from 1884.

MR. KILLOCK: 1884.

THE COMMISSIONER: Yes, I have it here somewhere.

exhibit?

MR. KELLOCK: No, the present one is taken from Trade of Canada, and it deals only with the British preferential rates.

MR. McRUER: Is this something --

MR.KELLOCK: It deals only with imports from the United Kingdom rather than with total imports as exhibit 1342 does.

MR. McRUER: Are you talking about something that is not in your brief?

MR. KELLOCK: I am talking about something that his lordship asked that I should do.

MR. McRUER: I would like to have a copy of it; that is all.

MR. KELLOCK: You are certainly entitled to one; I thought you had one.

THE COMMISSIONER: This statement is from Trade of Canada?

MR. KELLOCK: Yes, my lord; it is stated on the sheet at the foot.

THE COMMISSIONER: It will be number 1351.

EXHIBIT NO: 1351: Average ad valorem rates on dutiable imports and total imports from Great Britain.

MR. KELLOCK: As these are fiscal years your lordship will see that the 1936 figures will not include the reductions in duty made on May 2, 1936. The story which this exhibit tells is pretty much the same as exhibit 1342 in its general tendencies except that --

SECRETARY WHITELEY: Could not the value have been

MR. KELLOGG: No, the present one is taken from Trade of Canada, and it deals only with the British preferential rates.

MR. McPHEE: Is this something --

MR. KELLOGG: It deals only with imports from the United Kingdom rather than with total imports as shown in the table.

MR. McPHEE: Are you talking about something that is not in your brief?

MR. KELLOGG: I am talking about something that Lord Cranbrook asked that I should do.

MR. McPHEE: I would like to have a copy of it; that is all.

MR. KELLOGG: You are certainly entitled to one. I thought you had one.

THE COMMISSIONER: This statement is from Trade of Canada?

MR. KELLOGG: Yes, my Lord; it is stated on the sheet at the foot.

THE COMMISSIONER: It will be number 1.51.

EXHIBIT NO. 1.51: Average ad valorem rates on dutiable imports and total imports from Great Britain.

MR. KELLOGG: As these are fiscal years your Lordship will see that the 1.46 figures will not include the reductions in duty made on May 2, 1926. The stage which this exhibit tells is pretty much the same as which it did in the general tariff negotiations which had

MINISTER MACKENZIE: Shall not the entire duty been

put in this as well?

MR. KELLOCK: What do you mean by the value, dollars?

SECRETARY WHITELEY: Yes.

MR. KELLOCK: It could have. It was not done in 1342 either.

SECRETARY WHITELEY: It was in the original exhibit.

MR. KELLOCK: 1324; it has just been done the same way as 1342.

SECRETARY WHITELEY: You could show the proportion in the decline of your two sets of imports, duty free and dutiable.

MR. KELLOCK: Well, the percentage is there.

MR. McRUER: The percentage does not mean anything because you raise the duty and you have the volume of dutiable imports all declining. Then the free imports bear a heavier percentage, or a heavier ratio to the total imports because you have excluded dutiable imports and the percentage does not mean anything.

MR. KELLOCK: If you will look at the exhibit you will see I deal with the average rate on dutiable imports by itself the very first thing as well as on total imports.

MR. McRUER: I know, but when you are dealing with an average -- take, for instance, if you raise the duty, we will say, from 25% to 100% on dutiable imports and still leave your free imports there you probably would exclude all your dutiable imports and

and in this we will

MR. ROBSON: What do you mean by the value, sir?

SECRETARY MILLER: Yes.

MR. ROBSON: It could have. It was not done in 1942 either.

SECRETARY MILLER: It was in the original bill.

MR. ROBSON: 1924; it has just been done the same way as 1942.

SECRETARY MILLER: You could show the proportion in the decline of your two rate of import duty free and dutiable.

MR. ROBSON: Well, the percentage is there.

MR. MOLDER: The percentage does not mean anything because you raise the duty and you have the volume of dutiable imports all declining. Then the free imports bear a heavier percentage, or a heavier ratio to the total imports because you have excluded dutiable imports and the percentage does not mean anything.

MR. ROBSON: If you will look at the graph, you will see I deal with the average rate on dutiable imports as about the same thing as well as the total imports.

MR. MOLDER: I know, but when you are dealing with an average -- take, for instance, if you raise the duty, we will say, increase the duty on dutiable imports and still have your free imports, then you actually make the volume of your dutiable imports and

then you would have 100% of them would be duty free imports, 100% of your importations would be under duty free items. The higher you raise the tariff the more you throw the free items out of proportion.

MR. KELLOCK: Well, of course --

MR. McRUER: You have to go on the volume and not on just percentages.

MR. KELLOCK: It is a hypothetical case.

MR. McRUER: It is not hypothetical at all.

THE COMMISSIONER: Does Trade of Canada give the volume as well?

MR. KELLOCK: Yes, you have to take the volume and figure these percentages.

THE COMMISSIONER: 1324 also gives the volume?

SECRETARY WHITELEY: It gives the dollar value.

THE COMMISSIONER: Then these had both be properly amended.

MR. KELLOCK: Very well, my lord. I will do that before proceeding with this one.

MR. McRUER: Take, for instance, with all imports in 1930, all dutiable imports were $647,230,000 and in 1934 there was $295,566,000, or less than half dutiable imports.

THE COMMISSIONER: That is from the whole world.

MR. McRUER: From the whole world, everything, so you can see how it will throw out the balance of the free imports, duty free imports because they would not be changed. They were not affected by the tariffs that were introduced.

THE COMMISSIONER: It would not take long to

then you would have 100% of them would be duty free import, 100% of your imported one would be under duty free items. The higher you raise the tariff the more you throw the free items out of proportion.

MR. KILLOCK: Well, of course --

MR. McGEER: You have to go on the volume and not on just percentages.

MR. KILLOCK: It is a hypothetical case.

MR. McGEER: It is not hypothetical at all.

THE COMMISSIONER: Does Trade or Canada give the volume in value?

MR. KILLOCK: Yes, you have to take the volume and figure these percentages.

THE COMMISSIONER: 1924 also gives the volume?

SECRETARY WHITELEY: It gives the dollar value.

THE COMMISSIONER: Then these had both be properly amended.

MR. KILLOCK: Very well, my lord. I will go that before proceeding with this one.

MR. McGEER: Yes, the [illegible], the all imports in 1920, dutiable imports were $647,270,000 and in 1924 there was $295,386,000, or less than half dutiable imports.

THE COMMISSIONER: That is from the whole world.

MR. McGEER: From the whole world, everything, so you can see how it will throw out the balance of the free imports, duty free imports because they would not be changed. They were not affected by the tariffs that were introduced.

MR. McGEER: It would not vary that much.

make this change. After the recess you can come back to it again.

MR. McRUER: I think we should have the quantities on in each case to complete it.

THE COMMISSIONER: Well, the dollar value anyhow.

MR. KELLOCK: My lord, I would like to direct your attention now to my small factum with regard to the companies --

THE COMMISSIONER: Has it been digested?

MR. McRUER: It has not been digested as much as I would like to have it. I found out it had been distributed to departmental officials about three or four days before it was distributed to me.

MR. KELLOCK: There is no use of my friend looking at me. In the first place, this was prepared in answer to the argument in my friend's brief, and I got it in its final shape a couple of days before I handed it to him.

MR.McRUER: In its final stage; you know perfectly well it was being handed out to people and kept back from me.

MR. KELLOCK: I refrained from saying anything about the way you have handed your brief around.

MR. McRUER: I handed it to you first. Certainly it has been broadcast and so has yours. I do not blame you for that.

THE COMMISSIONER: There is only one question arises and that is whether Mr. McRuer has had sufficient time.

MR. McRUER: My friend can go on with it. I

confess I have only got through about ten pages of it so far.

THE COMMISSIONER: Because it is quite a brief in itself.

MR. KELLOCK: It is in answer to my friend.

MR. McRUER: A great deal of it is new material altogehher. It is not answering me at all.

MR. KELLOCK: I am in your lordship's hands.

THE COMMISSIONER: Go on.

MR. McRUER: How could I have time --

MR. KELLOCK: My friend is either ready or he isn't. If he isn't ready then say so; if he is don't interrupt.

THE COMMISSIONER: I have told you to go on.

MR. KELLOCK: With regard to the hosiery section --

THE COMMISSIONER: You are not beginning at the beginning of it then?

MR. KELLOCK: I want to deal first with the hosiery section.

THE COMMISSIONER: Very well, go on.

MR. KELLOCK: " According to a list prepared at the request of Commission Counsel, and submitted to him, there are 94 establishments in Canada in which hosiery is produced. Some companies produce only hosiery, while others produce hosiery in conjunction with other products. In some cases the yarns used are spun or thrown by the mills, in other cases mills buy their yarns and do their throwing"--

purpose I have only got through about ten pages of it so far.

THE COMMISSIONER: Because it is quite a brief in itself.

MR. ALLDOCK: It is in answer to my friend.

MR. MCRUER: A great deal of it is new material altogether. It is not answering me at all.

MR. ALLDOCK: I am in your lordship's hands.

THE COMMISSIONER: Go on.

MR. McRUER: How could I have time --

MR. ALLDOCK: My friend is either ready or he isn't. If he isn't ready, then say so; if he is he's [illegible].

THE COMMISSIONER: I have told you to go on.

MR. ALLDOCK: with regard to the boatery section --

THE COMMISSIONER: You are not beginning at the beginning of it then?

MR. ALLDOCK: I want to deal first with the [illegible] matter.

[illegible] may call it, is an [illegible] at the request of Vancouver Counsel, and submitted to him, there are 94 establishments in Canada in which boatery is produced. Some [illegible] only lobster, while others produce boatery in conjunction with other products. In some cases the juices used are drawn or thrown by the mills, in other cases mills for that purpose are used [illegible]

THE COMMISSIONER: And do their throwing?

MR. KELLOCK: Yes, my lord; I beg your lordship's pardon, it should be "buy their yarns and buy their throwing".

"Some mills producing hosiery"--

THE COMMISSIONER: Just what do you mean by buying their throwing?

MR. KELLOCK: That is, they have it done for them outside and pay for the operation.

"Some mills producing hosiery produce only one type, while other companies produce a wide variety of types. Some mills cater mainly to what might be termed the 'high style' trade, while others produce what might be termed 'bread-and-butter' lines. The raw materials used are wool, silk, cotton and rayon, or combinations. The knitting machinery used is of a great variety, from light single head machines that produce one stocking at a time to the heavy, highly specialized, and expensive full fashioned hosiery knitting machines which knit from 18 to 20 legs at one time. It will, therefore, be appreciated that comparisons of financial returns and records as between mills producing hosiery, or with such mills grouped together, is not a simple matter."

In dealing first with the market in Canada, my lord, I take first domestic production.

" The importance of this section of the textile industry may be seen from the production of hosiery in Canada for the years 1930 to 1934

THE COMMISSIONER: and do their throwing?

MR. LAMBERT: Yes, my lord: I beg your lordship's pardon, it should be "by their yarns and by their [illegible]".

"Some mills producing hosiery —

The Chief Commissioner: What do you mean by buying their throwing?

MR. LAMBERT: Just is, they have it done for them outside and pay for the operation.

"Some mills producing hosiery produce only one type, while other companies produce a wide variety of types. Some mills are too nearly to what might be termed the 'high style' trade, while others produce what might be termed 'bread-and-butter' lines. The raw materials used are wool, silk, cotton and rayon, or combinations. The knitting machinery used is of a great variety, from 14 [illegible] at a time to the heavy, highly specialized, [illegible] machines which knit from 18 to 20 legs at one time. It will, therefore, be appreciated that comparisons of financial returns and records as between mills producing hosiery, or with such mills grouped together, is not a simple matter.

In dealing first with the market in Canada, my lord, I take first domestic production.

"The importance of this section of the textile industry may be seen from the production of hosiery in Canada for the fiscal year in 1944

"inclusive, as follows:"--

This is in dozen pairs. In 1930 3,941,836 dozen pairs having a value of $21,115,013. In 1931, 4,889,604 dozen pairs having a value of $20,926,798. In 1932 4,949,524 dozen pairs having a value of $18,683,811. In 1933, 5,199,991 dozen pairs having a value of $17,801,312 and in 1934 5,578,416 dozen pairs having a value of $18,758,341, and in the five years the total value is $97,285,275.

THE COMMISSIONER: Between 1930 and 1934 your production went up about 33%. Your value came down about one-sixth.

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: That is, it is a decline in price.

MR. KELLOCK: A decline in price.

MR. HOOPER: Decline in raw material price.

MR. KELLOCK: "These figures of production are not quite complete because they do not include the production of hosiery by Belding-Corticelli Ltd., which is included in the general figures in the Dominion Bureau of Statistics report on the Silk Industry in Canada, or a few of the other mills which are probably included in the woollen textile industry report, but are sufficiently accurate for the purpose for which they are used.

Imports of hosiery into Canada are set out in the same Dominion Bureau of Statistics report as follows:"

"Imaline, as follows:"—

This is in dozen pairs. In 1920 8,941,[illegible] dozen pairs having a value of $[illegible],115,[illegible]. In 1921, 4,[illegible],604 dozen pairs having a value of $[illegible],[illegible],[illegible]. In 1922 [illegible],349,384 dozen pairs having a value of $[illegible],[illegible],[illegible]. In 1923, 5,189,[illegible] dozen pairs having a value of $[illegible],[illegible],[illegible] and in 1924 3,[illegible],[illegible] dozen pairs having a value of $[illegible],[illegible],[illegible], and in the five years the total value is $[illegible],[illegible],[illegible].

[illegible] production went up about [illegible]. Your value came down [illegible].

Mr. [illegible]: Yes, my lord.

THE COMMISSIONER: That is, it is a decline in [illegible].

Mr. [illegible]: - decline in price.

MR: [illegible]: Decline in raw material price.

Mr. [illegible]: "These figures of production are not quite complete because they do not include the production of hosiery by weighing-machines [illegible], which is included in the general figures in the Dominion Bureau of Statistics report on the Silk Industry in Canada, or a few of the other mills [illegible] in the woollen textile industry report, but are sufficiently accurate for the purpose for which they are used.

Imports of hosiery into Canada are set out in the same Dominion Bureau of Statistics report as follows:"

In 1930 1,817,996 dozen pairs of a value of $4,053,528. In 1931, 233,576 dozen pairs valued at $984,656. In 1932 118,970 dozen pairs valued at $474,232. In 1933 91,510 dozen pairs value at $360,212 and in 1934 85,764 dozen pairs of a value of $367,281. Exports are set out in the same report as follows: 1930, there were 84,833 dozen pairs of a value of $907,761. 1931, 76,075 dozen pairs of a value of $695,041. 1932, 138,735 dozen pairs of a value of $1,016,354. 1933, 192,795 dozen pairs of a value of $1,246,232. 1934, 301,353 dozen pairs of a value of $1,920,021, the total for the period being 793,791 dozen pairs of a value of $5,785,409.

THE COMMISSIONER: That last year, you exported about 12% of your production.

MR. KELLOCK: I haven't figured that, my lord.

THE COMMISSIONER: I say about, just looking at it. Yes, you produced $18,758,000 worth and exported $1,920,000. Have you continued to increase your export ratio that way?

MR. KELLOCK: Since that time? I don't know that.

THE COMMISSIONER: I think we got those figures.

MR. McRUER: Mr. Thompson's company, Canadian Silk Products, exports about 25%.

MR. KELLOCK: No, 15% and the Julius Kayser about 32%.

MR. McRUER: Well, between the two of them they run pretty close to 25%.

In 1920 1,817,996 dozen pairs of a value of $4,088,888. In 1921, 882,876 dozen pairs valued at $984,686. In 1922 1,976 dozen pairs valued at $4276,286. In 1923 91,310 dozen pairs valued at $800,812 and in 1924 86,764 dozen pairs of a value of $667,281. Exports are set out in the same report as follows: 1920, there were 84,888 dozen pairs of a value of $407,781. 1921, 76,076 dozen pairs of a value of $645,041. 1922, 138,785 dozen pairs of a value of $1,016,574. 1923, 192,795 dozen pairs of a value of $1,246,282. 1924, 301,889 dozen pairs of a value of $1,860,041, the total for the period being 736,781 dozen pairs of a value of $5,783,408.

THE COMMISSIONER: That last year, you exported about 15% of your production.

MR. ROBSON: I haven't figured that, my lord.

THE COMMISSIONER: I say about, just looking at it. Yes, you produced $18,798,000 worth and exported $1,[illegible]. Is [illegible] your export ratio that way?

MR. ROBSON: Since that time? I don't know that.

THE COMMISSIONER: I think we got those figures.

MR. McRUER: Mr. Thompson's company. Canadian [illegible], [illegible] $[illegible]. [illegible] 1924 [illegible] about 32%.

MR. McRUER: Well, between the two of them they run pretty close to 40%.

MR. KELLOCK: That is in dollars, my lord, not dozen pairs.

THE COMMISSIONER: It is dollars I am talking about.

MR. McRUER: How do dozen pairs compare on export, out of curiosity?

MR. KELLOCK: What is that?

MR. McRUER: How does the ratio compare in dozen pairs?

THE COMMISSIONER: It is about 13% or 14%, in dollar

MR. KELLOCK: The production is 5,578,000 and the export 301,000.

MR. McRUER: I want to get at the increase. Do you get the same price on the export goods as you do on the domestic?

THE COMMISSIONER: In 1934 there were 301,000 dozen pairs, about 6%.

MR. KELLOCK: In volume. Then, the apparent market. In 1930 the apparent market in Canada was 5,674,995 dozen pairs. That is made up of the domestic production of 3,941,836 dozen, imports of 1,817,996, a total of ~~5,774,22~~ 5,759,832. Exports are 84,833 and that arrives at the apparent market of the figure already given.

THE COMMISSIONER: Just a minute, is that all hosiery?

MR. KELLOCK: That is all hosiery, my lord, yes.

THE COMMISSIONER: I would imagine we needed more hosiery than that in a year.

MR. KELLOCK: Well, it includes everything with the

MR. KEMPSON: That is in dollars, my lord, not down pains.

THE COMMISSIONER: It is dollars I am talking about.

MR. ROBB: Now do down pains compare on export, out of proportion?

MR. KEMPSON: What is that?

MR. MARSH: How does the ratio compare in down pains?

THE COMMISSIONER: It is about 15% or 16%, is it?

MR. MARSH: The percentage is 6,000,000 on the export 301,000.

MR. MORRIS: I want to get at the impact. Do you get the same price on the export goods as you do on the domestic?

THE COMMISSIONER: In 1954 there were 301,000 down pains, about 6%.

MR. KEMPSON: In volume. Then, the apparent market. In 1950 the apparent market in Canada was 5,674,375 down pains. That is made up of the domestic production of 5,941,000 down, imports of 1,017,000, a total of apparent 6,958,000. Exports are 84,000 and that arrives at the apparent market of the figure already given.

THE COMMISSIONER: Just a minute, is that all clear?

MR. MORRIS: That is all clear, my lord, yes.

THE COMMISSIONER: I think I started at twenty-one minutes that time in a year.

MR. MORRIS: Well, it includes everything with the

exception of what I said at the beginning, my lord, that is the production of the Belding Corticelli Company and the production of the woollen mills who make hosiery.

SECRETARY WHITELEY: They are dozen pairs.

THE COMMISSIONER: Yes, they are.

MR.McRUER: You never got back to the market there was in 1930, the annual market. In 1930 there were 5,674,000 dozen pair.

THE COMMISSIONER: Produced?

MR. McRUER: Produced.

THE COMMISSIONER: No, 3,941,000.

MR. McRUER: This is domestic and imported.

MR. KELLOCK: No, that is only domestic.

MR. McRUER: I say domestic and imported, 5,674,000 dozen pairs.

MR. KELLOCK: And taking out the exports.

MR. McRUER: Taking out the exports.

MR. KELLOCK: That is how we get the figure.

MR. McRUER: You never got back to that volume in the Canadian market yet, at least, on this total.

MR. KELLOCK: You can figure it out for any one year. I go on to figure it for the entire period.

MR. McRUER: You do not give it to us year by year.

MR. KELLOCK: But the figures are all there if you want it.

THE COMMISSIONER: Take 1934; you have domestic production of about five and a half million.

exception of what I said at the beginning, my lord, that is the production of the Belding Corticelli Company and the promotion of the woollen mills who make hosiery.

SECRETARY MITCHELL: They are dozen packs.

THE COMMISSIONER: Yes, they are.

MR. MORTON: You never got back to the market there was in 1920, the annual market. In 1920 there were 5,274,000 dozen pairs.

THE COMMISSIONER: Increased?

[illegible]

MR. MORTON: This is domestic and imported.

MR. BILLOCK: No, that is only domestic.

MR. MORTON: I say domestic and imported.

[illegible]

MR. BILLOCK: And taking out the exports.

MR. MORTON: Taking out the exports.

MR. BILLOCK: What is how we get the figure.

MR. MORTON: You never got back to that volume in the Canadian market yet, at least, on this total.

MR. BILLOCK: You can figure it out for any one year. I go on to figure it for the entire period.

MR. MORTON: You do not give it to us year by year.

MR. BILLOCK: [illegible] I will show it you best if.

THE COMMISSIONER: Have [illegible] you here [illegible] production of about [illegible]

and you have imports of 85,000. Those two together show you the market here, less exports.

SECRETARY WHITELEY: About 5,300,000 pair.

THE COMMISSIONER: After subtracting the exports?

SECRETARY WHITELEY: Yes.

MR. McRUER: As against 5,674,000 dozen pairs before.

SECRETARY WHITELEY: Of course, they say they are better quality now.

MR. McRUER: The consumer isn't buying as many.

THE COMMISSIONER: We wear them longer.

MR. KELLOCK: They are better quality as far as full fashioned hosiery is concerned and lowered price continuously.

MR. McRUER: The women disagree with you on that.

MR. KELLOCK: You better put some of them in the box.

MR. McRUER: You better ask your wife.

MR. KELLOCK: 1934 figure, my lord, according to my calculation is 5,362,827 dozen pair. I take the whole period, my lord, 1931 to 1934 inclusive and the domestic production was 20,617,535 dozen pairs, imports 529,820 making a total of 21,147,355. Exports are 708,958 and the apparent market 20,438,397. I say:

" If imports of hosiery into Canada had continued in 1931, 1932, 1933 and 1934 at the level of 1930 then the total imports in these four years would have amounted to 7,271,984 dozen pairs".

and you have imports of 88,000. These two together show you the market here, less exports.

SECRETARY MITCHELL: About 3,400,000 in 1?.

STOCKTARY MITCHELL: Yes.

Mr. MORGAN: As against 5,874,000 dozen as into before.

SECRETARY MITCHELL: Of course, they are very much better quality now.

MR. McMURR: The consumer isn't buying as much.

Mr. MITCHELL: No wear them longer.

MR. ALLCOCK: They are better quality as far as full fashioned hosiery is concerned and lowered price considerably.

MR. McMURR: The women disagree with you on that.

MR. ALLCOCK: You better put some of them in the box.

Mr. MORGAN: You better ask your wife.

Mr. MACDONALD (Brantford): Mr. Chairman, I am not to my satisfaction in 5,882,827 dozen pair. I take the whole period, my lord, 1921 to 1924 inclusive and the domestic production was 20,617,885 dozen pairs, imports 329,850 making a total of 21,147,885, exports are 708,998 and the apparent market 20,438,887. I say:

" If imports of hosiery into Canada had continued in 1921, 1922, 1923 and 1924 at the level of 1920 then the total imports in these four years would have amounted to 7,271,044 dozen pairs".

and there is a computation there as to how it is arrived at.

" As 529,820 dozen pairs were actually imported, the additional importation would have amounted to 6,742,164 dozen pairs more than were actually imported.

The result would have been to reduce the Canadian production from 20,438,397 dozen pairs to 13,696,233.

That is, Canadian workers would have produced approximately only two-thirds of what they actually produced. With reduced production, costs increase, and it is not an unreasonable assumption to make, that had the tariff not been increased in 1930, the imports would have continued at the 1930 level, or higher with the following results:

(a) Employment in Canada would have been reduced.

(b) The increased cost of producing hosiery in Canada might have resulted in losing the export market with further loss of employment."

It is perfectly obvious, of course, and perhaps trite to say it is a question of policy, that if we are going to increase imports of any product we are going to reduce domestic production, and reduce domestic employment.

MR. McRUER: I do not agree with that.

MR. KELLOCK: If articles which are consumed here

arrived at.

" As 520,000 dozen pairs have actually been imported, the additional importation would have amounted to 6,762,164 dozen pairs more than were actually imported.

The result would have been to reduce the importation from 20,000,000 dozen to about 13,238 dozen to approximately only two-thirds of what they actually imported. Also without increase, and it is not an unreasonable assumption to make, that had the tariff not been increased in 1890, the imports would have continued at the 1890 level, or higher with the following results:

(a) Employment in Canada would have been increased.

(b) The increased cost of producing hosiery in Canada might have resulted in losing the export market with further loss of employment."

It is perfectly obvious, of course, and perhaps trite to say it is a question of policy, that if we are going to increase tariffs or any product - we are going to reduce domestic production, and reduce domestic employment.

Mr. Speaker, I am not sure of the time.

Mr. Speaker: If critics who are interested are

are going to be produced abroad by foreign workmen then the employment incident to the manufacture of them is not going to be Canadian employment. It is a question of policy as to where the line is to be drawn. One follows as a direct result of the other.

MR. McRUER: The year 1936 is an answer to that. Have you got another copy of this brief? Now you are going on to the question of Mr. Howson's statements and I haven't got a copy for him. Mr. Hooper has to follow one angle of it and Mr. Howson the other.

MR. KELLOCK: I have already given you two or three.

MR. McRUER: You gave one to Mr. Beauregard. You had plenty of them sent out to other people that were not interested.

MR. KELLOCK: I resent that. If my friend had wanted an extra copy when I was at the hotel he could have had it.

MR. McRUER: I have been asking for it and asking for it.

MR. KELLOCK: You didn't ask me for an extra copy until this minute or you would have had it.

MR. McRUER: I was asking Mr. Berry. The point is if you were wanting me to follow what is in the brief it would not have been kept back to the last minute.

MR. KELLOCK: I didn't know you wanted another copy. As I say I handed you three copies. I resent my friend coming back from time to time to this complaint.

as a fact, we do not propose to question witnesses
that are personally incident to the manufacture of
them is not going to be Canadian employment. It is
a question of policy as to where the line is to be
drawn. The witness is a specialist in that.

Mr. McNab: The year 1920 is an answer to that.
Have you got another copy of this brief? Do you
are going on to the question of Mr. Hooper's statement
and I haven't got a copy for him. Mr. Hooper has
to follow one angle of it and Mr. Dawson the other.

Mr. KELLOCK: I have already given you two or
three.

Mr. McNab: You gave one to Mr. Dawson.
You had plenty of them sent out to other people that
were not interested.

Mr. KELLOCK: I resent that. If my friend had
wanted an extra copy when I was at the hotel he
could have had it.

Mr. McNab: I have been asking for it and asking
for it.

Mr. KELLOCK: You didn't ask me for an extra
and until then already we had sent out it.

Mr. Dawson: I was looking for. The point
is if you have duplicates of things that is in my
brief it would not have been kept back to the last
minute.

Mr. KELLOCK: I didn't know you wanted another
copy. My - my - instead you have right. I thought
my friend could have from time to time in this
case lately.

MR. McRUER: I resent the manner in which this brief got out. I heard the day before it was on the way, and the question was being asked as to whether we knew about it, and so on.

MR. KELLOCK: You didn't hear from me.

MR. McRUER: I know, but it is your fault.

MR. KELLOCK: I have made a statement to his lordship that it was an oversight on my part that my friend did not get it. If my friend does not choose to accept it I cannot help it.

MR. McRUER: I cannot accept it.

MR. KELLOCK: That is the first time my friend has taken that position with me and I am rather surprised at it, but I cannot help it.

THE COMMISSIONER: Has Mr. Howson got a copy now?

MR. HOWSON: Yes.

MR. KELLOCK: My lord, I come now to deal with the section of the industry which is dealt with in the exhibits prepared by Mr. Howson.

" In regard to the profits made by the hosiery industry in Canada, the Commission Auditor submitted tables (Exhibit 1155) as a sample of the hosiery industry in Canada for a ten year period, 1926 to 1935, with the number of mills in the report being 9 in 1926 and 1927 and increasing until there were 25 mills in the report from 1931 to 1935 inclusive. The value of the sales of these mills was:

Mr. Bowlen: I present the manner in which this brief got out. I heard the day before it was on the way, and the question was being asked as to what we knew about it, and so on.

Mr. Kellock: You didn't hear from me.

Mr. Lockie: I know, but it is your fault.

Mr. Kellock: I have made a statement to his lordship that it was an oversight on my part that my friend did not get it. If my friend does not choose to accept it I cannot help it.

Mr. Bowlen: I cannot accept it.

Mr. Kellock: That is the first time my friend has taken that position with me and I am rather surprised at it, but I cannot help it.

The Commissioner: Are Mr. Bowlen got a copy now?

Mr. Bowlen: Yes.

Mr. Kellock: My lord, I come now to deal with the section of the industry which is dealt with in the exhibits prepared by Mr. Hobson.

" In regard to the profits made by the hosiery industry in Canada, the Commission Auditor submitted tables (Exhibit 1165) as a sample of the hosiery industry in Canada for a ten year period, 1926 to 1935, with the number of mills [illegible] until there were 25 mills in the report from 1931 to 1935 inclusive. The value of the value of [illegible]

1930	$12,247,881	
1931	12,266,365	
1932	10,732,723	
1933	10,153,068	
1934	10,762,070	
Total	$57,162,107	5 year period'.

(Page 17180 follows)

"Since the production of the Julius Kayser Co. is included in these figures, of which about 10 per cent in value are products other than hosiery, approximately $1,200,000 should be taken from this figure for the 5 year period.

(Exhibit 1155:Kayser's sales 1930 to 1934 - $12,255,869, 10 per cent equals $1,225,586: source of information as to 10 per cent Commission's Secretary)

So that mills in the auditor's sample represent a production of hosiery of approximately $56,000,000. As the total production in Canada was over $97,000,000 (Par.2), the sample before the commission represents approximately 50 per cent of the production in Canada. It is submitted, as is inevitable in obtaining a sample of this nature, that this sample represents the operations of the most successful mills in Canada, two of the most su ccessful mills in Canada being included, and does not include many that were not so successful."

Then I come to the point as to whether or not the industry profited unduly.

"Taken by years the net profit as a percentage on sales in the auditor's sample was as follows:

"Since the formation of the Sales Association, in included in these figures, of which about 10 per cent in value are products other than dairy, approximately $1,800,000 should be taken from this figure for the 5 year period.

(Exhibit 1156:Revenue sales 1930 to 1934 - $14,800,000, 10 per cent equals $1,480,000: reason of information as to 10 per cent "Association". Secretary)

So that while in the auditor's sample represent a production of dairy of approximately $14,800,000 as the total production in Canada was over $27,000,000 (Ser.8), the sample before the commissioner represents approximately 50 per cent of the production in Canada. It is submitted, as is inevitable in obtaining a sample of this nature, that this sample represents the operations of the most successful milks in Canada, two of the most so successful milks in Canada being included, and does not include many that were not so successful."

Then I come to the point as to whether or not the industry profited unduly.

"Taken by years the net profit as a percentage on sales in the auditor's sample was as follows:

	% net profit (after bond interest and income tax)
1926	6.0 %
1927	7.7 %
1928	9.2 %
1929	7.8 %
1930	3.8 %
1931	4.8 %
1932	4.1 %
1933	4.5 %
1934	4.8 %
1935	5.1 %

That is, the successful mills in the auditor's sample in 1926 got 6 cents profit for every dollar's worth of goods sold, in 1927, 7.7 cents for every dollar's worth of goods sold, in 1928 9.2 cents and in 1929 7.8 cents."

Mr. McRUER: These are percentages on sales.

Mr. KELLOCK: That is what it says.

"It is submitted that this is not an undue return for the risks inherent in manufacturing enterprises of this nature. In 1930 the return of net profit on sales dropped to 3.8 cents for every dollar, and amounted in succeeding years to 4.8 cents in 1931, 4.1 cents in 1932, 4.5 cents in 1933, 4.8 cents in 1934 and 5.1 cents in 1935. It is submitted that by comparing the figures for 1926 to 1929, 1930 being treated as an abnormal year, with the figures for 1931 to 1935, which was after the increase in the hosiery

"customs tariff, it will be seen that the returns were not so good, and it is submitted that the comparison indicates that there was no undue advantage taken of the tariff to make larger profits then before."

The COMMISSIONER: What was unusual about the year 1930 ?

Mr. KELLOCK: That was the first year after the very severe pressure came. It was more or less a special year by itself.

The COMMISSIONER: You had the depression and then you got tariff relief ?

Mr. KELLOCK: Yes.

Mr. McRUER: What was the result in 1930 ?

Mr. KELLOCK: The net profit percentage in 1930 was 3.8 per cent, as indicated on the same page.

Mr. McRUER: That is on sales ?

Mr. KELLOCK: Yes, they are all on sales.

The COMMISSIONER: These profits are all on sales ?

Mr. KELLOCK: Yes, My Lord. At the top of the page the statement appears that, taken by years, the net profit as a percentage on the sales in the auditor's sample was so much--the figures are set out--and I say that really means so much on every dollar's worth of goods sold.

Mr. McRUER: I thought that as the volume of sales increased you could make more money on a lower net profit on sales.

Mr. KELLOCK: I understand that is still true.

"reserves tariff", it will be seen that the returns were not so good, and it is submitted that the protective (illegible) had been in effect (illegible) of the service in-(illegible) when before.

The Commissioner: What was unusual about the year 1920?

Mr. Kilbourn: That was the first year after the very severe pressure came. It was more or less a normal year in (illegible).

The Commissioner: You had the figures and you put that tariff tariff?

Mr. Kilbourn: Yes.

Mr. Graham: What was the result in 1920?

Mr. Kilbourn: The net profit percentage in 1920 was 6.8 per cent, as indicated on the same page.

Mr. Graham: That is on sales?

Mr. Kilbourn: Yes, they are all on sales.

The Commissioner: These profits are all on sales?

Mr. Kilbourn: Yes, by land. At the top of the page the statement supports that, taken by years, the net profit as a percentage on the sales in the auditor's sample was so much--the figures are set out--and I say that really means so much on every dollar's worth of goods sold.

Mr. Graham: I thought that as the volume of sales increased you would have to carry a lower net profit on sales.

Mr. Kilbourn: I maintained that it would.

Mr. McRUER: The effect was to increase the volume of domestic production, was it not ?

Mr. KELLOCK: The effect of what ?

Mr. McRUER: The effect of the increased tariff was to increase the volume of domestic production ?

Mr. KELLOCK: I think that is true.

Mr. McRUER: Then you could make more money on a lower net profit on sales ?

Mr. KELLOCK: If you are able to turn over your capital more often you make more money.

Mr. McRUER: This doesn't mean much.

Mr. KELLOCK: I am glad my friend says that, because when he deals with net profit on the sales he says it doesn't mean very much.

Mr. McRUER: I said that in my argument two or three times. The question that did matter was the profit on capital.

Mr. KELLOCK: I am glad to have that admission from my friend.

Mr. McRUER: It is not an admission, it is a definite statement. I said it several times in the opening of my argument.

Mr. KELLOCK: I am dealing on this page withnet profit on sales and I come now to translate that into net profits to shareholders.

Mr. McRUER: Not to the shareholders but on the shareholders' equity.

Mr. KELLOCK: My friend is right; the shareholders did not get it all.

Mr. McDUFF: The effect was to increase the volume of domestic production, was it not?

Mr. KELLOCK: The effect of what?

Mr. McDUFF: The effect of the increased tariff was to increase the volume of domestic production?

Mr. KELLOCK: I think that is true.

Mr. McDUFF: Then you could make more money on a lower net profit on sales?

Mr. KELLOCK: If you are able to turn over your capital more often you make more money.

Mr. [illegible]:

Mr. KELLOCK: I am glad my friend says that, because when we deals with net profit on the [illegible] he says it doesn't mean very much.

Mr. McDUFF: I said that in my argument two or three times. The question that did matter was the profit on capital.

Mr. KELLOCK: I am glad to have that admission from my friend.

Mr. McDUFF: It is not an admission, it is a definite statement. I said it several times in the opening of my argument.

Mr. KELLOCK: I am dealing on this page with profit on sales and I come now to translate that into net profits to shareholders.

Mr. McDUFF: Not to the shareholders but on the [illegible].

Mr. KELLOCK: My friend is right; the shareholder did not get it all.

The COMMISSIONER: We will discuss that when the time comes.

Mr. KELLOCK: I have pointed out that after the increase in the hosiery tariff the revenues were not so good, and the comparison indicates that no undue advantage was taken of the tariff to make larger profits than before. That statement is based on the number of cents which went to the manufacturer out of every dollar of sales. It is perfectly true that prior to 1930 the number of cents that went to the manufacturer out of every dollar of sales was more than it was in any year after the tariffs were increased, and I say that 1930 was a more or less abnormal year. I come now to the shareholders' position:

"The net profits on shareholders equity of the commission auditor's sample are set out for the 10 year period as follows:

1926	11.6 %
1927	14.8 %
1928	13.6 %
1929	13.2 %
1930	6.4 %
1931	7.0 %
1932	5.8 %
1933	6.6 %
1934	7.8 %
1935	8.4 % "

That is what the shareholders got out of the business in those years.

The COMMISSIONER: We will discuss that when the time comes.

Mr. WINDER: I have pointed out that after the increase in the bounty tariff the returns were not so good, and the commissioner indicates that an extra advantage was taken of the tariff to make larger profits than ought. [illegible] [illegible] of course which went to the manufacturer out of every dollar of sales. It is perfectly true that prior to 1892 the number of cents that went to the manufacturer out of every dollar was of course much more than it was in any year after the tariffs were increased, and I say that 1890 was a very or less normal year. I now to the abnormalities position:

The net profits on abnormal equity of the commission monitor's sugars are set out for the 10 year period as follows:

1882	11.0 %
1887	14.8 %
1888	12.0 %
[illegible]	[illegible]
1890	8.4 %
[illegible]	[illegible]
[illegible]	[illegible]
1893	8.8 %
[illegible]	[illegible]
[illegible]	[illegible]

[illegible] the abnormalities and [illegible] [illegible] [illegible] years.

"That is, the successful mills represented in the commission auditor's sample earned in net profits on the shareholders' equity in 1926 of 11.6 per cent, in 1927 of 14.8 per cent, in 1928 of 13.6 per cent and in 1929 of 13.2 per cent."

The COMMISSIONER: Are all these fiscal years ?

Mr. KELLOCK: These are the companies' fiscal years.

Mr. McRUER: My friend calls them the successful mills. They are the mills that reported to the commission, and there is not much use calling them successful or otherwise. They are simply the reporting mills, and no doubt they were successful.

Mr. KELLOCK: If my friend had read my argument on an earlier page he would see why I said they were the successful mills.

Mr. McRUER: Why should you refer to them as successful mills ? They are the reporting mills.

Mr. KELLOCK: I gave the reason for referring to them in that way, and Mr. Howson admitted in cross-examination, with regard to many sections of the industry, that the companies reporting were the successful companies.

Mr. McRUER: There is nothing in that statement; that is an improper distortion of Mr. Howson's evidence. My friend says: "That is, the successful mills represented in the commission auditor's sample earned" and so on.

in the commission audit's sample caused in net profits on the stockholders' equity in 1926 of 11.5 per cent, in 1927 of 14.1 per cent, in 1928 of 16.8 per cent and in 1929 of 18.7 per cent.

The COMMISSIONER: Are all these fiscal years?

Mr. KELLOGG: These are the companies' fiscal years.

Mr. KELLOGG: My friend calls them the successful mills. They are the mills that responded to the commission, and there is not much use calling them successful or otherwise. They are simply the reporting mills, and no doubt they were successful.

Mr. KELLOGG: If my friend had read my argument on an earlier page he would see why I said they were the successful mills.

Mr. KELLOGG: Why should you refer to them as successful mills? They are the reporting mills.

Mr. KELLOGG: I gave the reason for referring to them in that way, and Mr. Howson admitted in cross-examination, with regard to many sections of the income tax, that the statistics dealing with the successful companies.

Mr. KELLOGG: There is nothing in that statement; that is an improper distortion of Mr. Howson's evidence.

[illegible]

The COMMISSIONER: Where does that appear ?

Mr. McRUER: Your Lordship will see it at the top of page 5. What the statement refers to is the number of reporting mills, those that reported to the commission; but we tried to get all of them to report.

The COMMISSIONER: What percentage of the mills did report ?

Mr. KELLOCK: Represented by production, we have $56,000,000 out of $97,000,000.

Mr. McRUER: My friend arrives at that figure in this way. He takes the reports submitted to the bureau of statistics,and we all know that they are made up on estimates and are not accurate statements of what has taken place.

Mr. KELLOCK: I do not agree with that. As a matter of fact the production figures are accurate returns from the mills to the Dominion Bureau of Statistics and are tabulated by the bureau.

Mr. McRUER: Why do you say that they are accurate ? I was told by the mills themselves, when we dealt with that phase of the matter, not to rely too much on those figures because they were made up in a loose sort of way.

Mr. KELLOCK: Well, that is a distortion of the evidence. We can ask Mr. Whiteley whether the figures I have taken from the bureau are estimates or whether they are accurate.

Mr. McRUER: He does not make them up for the Bureau of Statistics. However, that is what you say.

The COMMISSIONER: How does that agree?

Mr. BOOTH: Very correctly will one it at the top of page 6. That the statement refers to is the number of operating mills, those that reported to the commission; but we tried to get all of them to report.

The COMMISSIONER: Was someone of the mills did report?

Mr. BOOTH: Represented by production, we have 1,000,000,000 out of 1,000,000,000.

Mr. LOCK K: My friend arrives at that figure in this way. He takes the remarks attributed to the officers of association, and we all know that they are not on estimates and are not accurate statements of what has taken place.

Mr. BILLING: I do not agree with that. As a matter of fact the production figures are accurate returns from the mills to the production bureau of statistics and are tabulated by the bureau.

Mr. BOOTH: Why do you say that they are accurate? I was told by the mills themselves, when we dealt with that phase of the matter, not to rely too much on those figures because they were made up in a loose manner or way.

Mr. HEMLOCK: Well, that is a distortion of the evidence. We can ask Mr. Whiteley whether the figures I have taken from the bureau are estimates or whether they are accurate.

Mr. BOOTH: He does not make them up for the purpose of publishing. However, that is what you say.

Mr. KELLOCK: The reason I call these mills the successful mills is, as I pointed out in paragraph 7, that it is inevitable in obtaining a sample of this nature that this sample represents the operations of the most successful mills in Canada.

The COMMISSIONER: What do you mean by sample ?

Mr. KELLOCK: That is an economic term, My Lord. It represents the reporting mills covered by the exhibit. That is a sample of the industry.

Mr. McRUER: But why should they be regarded as more successful than the others ?

The COMMISSIONER: You cannot hold back certain mills and then say that those that reported are the best. You cannot take those as a fair sample of the industry. You cannot argue that way. How do I know that those that did not report are less successful than those that reported ?

Mr. KELLOCK: Is it not true that when a commission of this kind is instituted the successful mills are the ones who have their records in the best shape and are therefore the ones that send in answers to the questionnaire ?

The COMMISSIONER: I would not assume that at all.

Mr. KELLOCK: That is my experience.

The COMMISSIONER: Why should I assume that ? I should have thought, on the contrary, that those who wanted us to think that they did not have sufficient tariff protection would be anxious to come forward and show how unsuccessful they had been. Why should they hold

Mr. KILLOCK: The reason I call them mills the successful mills is, as I pointed out in parenthesis, that it is inevitable in obtaining a sample of this nature that this sample represents the successful or the most successful mills in Canada.

The CHAIRMAN: What do you mean by sample?

Mr. KILLOCK: That is an economic term, my lord. It represents the reporting mills covered by the exhibit. That is a sample of the industry.

Mr. McKEEN: But why should they be regarded as more successful than the others?

The CHAIRMAN: You cannot hold back certain mills and say that they have not reported, you must. You cannot take those as a fair sample of the industry. You cannot argue that way. How do I know that those that did not report are less successful than those that reported?

Mr. KILLOCK: Is it not true that when a committee of this kind is instituted the successful mills are the ones who have their records in the best shape and are therefore the ones that send in answers to the questionnaire?

The CHAIRMAN: I would not assume that at all.

Mr. KILLOCK: That is my experience.

The CHAIRMAN: Why should I assume that? I should have thought, on the contrary, that those who want us to think that they did not have sufficient tariff protection would be anxious to show Canada that how unsuccessful they had been. Our course they may have

back and allow me to form a false impression of the prosperity of the industry. I am not going to assume that one set of mills, those reporting, are more successful than another set, those that have not reported. I cannot assume that unless I have evidence to go on.

Mr. KELLOCK: I do not ask your Lordship to do that.

The COMMISSIONER: But you do, Mr. Kellock, because right there in the brief you say the successful mills represented in the commission auditor's sample earned net profits on shareholders' equity of so much in certain years stated. All I know is that the mills that reported earned so much.

Mr. KELLOCK: And all that I want to submit, My Lord, is that the mills that reported include the most successful.

The COMMISSIONER: I do not know anything about that. Why did you not bring forward the poor and backward mills as a horrible example of what insufficient tariff protection can result in?

Mr. KELLOCK: After all, My Lord, I am only acting for a certain association which includes certain people.

The COMMISSIONER: Then you cannot speak for those that did not report.

Mr. KELLOCK: I submit that when Mr. Howson deals with a certain group of reporting companies--

The COMMISSIONER: He deals with all those that reported.

back and allow me to form a false impression of the [illegible]. I am not willing to assume that one set of mills, those remaining, are more successful than another set, those that have not reported. I cannot assume that unless I have evidence to go on.

Mr. ELLOCK: I do not ask your assistance to do that.

The COMMISSIONER: But you do, Mr. Ellock, because right there in the brief you say the successful mills represented in the association auditor's sample earned profits on American colors' equity of so much in certain years added. All I know is that the mills that reported earned so much.

Mr. ELLOCK: That is all that I have to submit, my lord, in that the mills that reported having the [illegible].

The COMMISSIONER: I do not know anything about that. Why did you not bring forward the poor and backward mills as a horrible example of what insufficient tariff protection can result in?

Mr. ELLOCK: After all, My Lord, I am only acting for a certain association which includes certain people.

The COMMISSIONER: When you cannot speak for those that are not [illegible].

Mr. ELLOCK: [illegible] there is [illegible] a [illegible] of [illegible]—

The COMMISSIONER: [illegible] [illegible] [illegible] [illegible].

Mr. KELLOCK: Yes, and separately with a group he calls the representative companies.

The COMMISSIONER: When you come to discuss anything he said about a separate group we can hear you, but so far you have taken the figures as representing the industry as a whole.

Mr. KELLOCK: Yes.

The COMMISSIONER: I am not going to assume that they are more successful than the rest, they are simply the reporting section of the industry.

Mr. KELLOCK: Mr. Howson said that they did include the most successful companies.

Mr. HOWSON: Pardon me, Mr. Kellock; I did not say that. There were some that were not as successful and I gave you some samples of other companies not included that were more successful than others that were included.

Mr. KELLOCK: I am sorry if I misunderstood you. I shall have to look it up.

Mr. WHITELEY: It should be pointed out, in regard to the figures for proportion of production as given on page 4, that the Dominion Bureau of Statistics have no separate division for hosiery. They have a division that is known as knit goods that includes both hosiery and knit goods. In the price spreads investigation they divided the industry into two parts, the one hosiery and the other knit goods, which was a subdivision of the category used by the dominion bureau. Mr. Howson followed the same division.

Mr. HOLLOCK: Yes, and separately with a group to cells the representative companies.

The CHAIRMAN: When you come to discuss anything he said about a separate group we can hear you, but so far you have taken the figures as representing the industry as a whole.

Mr. [illegible]:

The CHAIRMAN: I am not going to assume that they are more successful than the rest, they are simply the reporting section of the industry.

Mr. [illegible]: Mr. Howson said that they did include the most successful companies.

Mr. [illegible]: Pardon me, Mr. Hollock; I did not say that. There were somewhat more not so successful and I gave you some samples of other companies not included that were more successful than others that were included.

Mr. HOLLOCK: I am sorry if I misunderstood you. I shall have to look it up.

Mr. MITCHELL: It should be pointed out, in regard to the figures for proportion of production as given on page 4, that the Dominion Bureau of Statistics does not secure details from the factory. They have a circular that is sent to all owners of industries with factory and mill number. In the table supplied investigation has failed for factory numbers not given. The factory and its value might have a multiplicity of factory numbers by the multiple factors. Mr. Bureau failures to make distinc-

Therefore, if the hosiery division is taken as a separate section, it is not true to say that the hosiery firms reporting were 57 per cent of the hosiery division.

Mr. KELLOCK: I did not say 57 per cent. I have given in dollars the actual hosiery production.

Mr. WHITELEY: Whatever the figures used, it is not true to say that they represent, or that the reporting companies represent a certain proportion of the division.

Mr. KELLOCK: I did not say that. I said what the total production of hosiery was and what the production of these particular companies is in dollar value.

Mr. WHITELEY: But that cannot be applied to the hosiery division as such, because the hosiery division as such is a category set up for the purpose of this investigation and the price spreads; it is not a category used in the dominion bureau.

Mr. McRUER: The $97,000,000 might include other things than hosiery.

Mr. WHITELEY: No, that is the hosiery production. The hosiery division comprises hosiery and knit goods. The hosiery division as such is a distinct category.

Mr. McRUER: Penmans is a reporting company under the knit goods division, but they have one very large factory that does knitting, and their prosperity is considered under the head of knit goods and not under hosiery. That, I believe, is Mr. Whiteley's point

separate section, it is not true to say that the hosiery firms reporting were 97 per cent of the hosiery division.

Mr. KNOX: I did not say 97 per cent. I have given in dollars the actual hosiery production.

Mr. MILLAR: Whatever the figures used, it is not true to say that they represent, or that the reporting companies represent a certain proportion of the industry.

Mr. KNOX: I did not say that. I said what the total production of hosiery was and what the production of these particular companies is in dollar figures.

Mr. MILLAR: But that cannot be applied to the hosiery division as such, because the hosiery division as such is a category set up for the purpose of this investigation and the price spreads; it is not a category used in the domination bureau.

Mr. KNOX: The $97,000,000 might include other things than hosiery.

Mr. MILLAR: No, that is the hosiery production. The hosiery division as such is a distinct category.

Mr. KNOX: Fonmess is a reporting company under the work goods division, but they have my very long history that some initiative, as it is generally in consultation with the head of that group and are under control. That is reason, so we distinguish quite

and it is a proper one.

Mr. WHITELEY: Later on, when Mr. Kellock gives the figure for knit goods, he shows the companies that are ~~successful~~ selected under knit goods as having a larger production than the knit goods figure would indicate, owing to the hosiery.

Mr. McRUER; Penmans would be one of the least successful ones according to my friend's suggestion.

The COMMISSIONER: That is to say, they do not report under hosiery.

Mr. McRUER: No, but under knit goods. But they are in the $97,000,000 production of hosiery.

Mr. KELLOCK:The figures for domestic production, imports and exports of hosiery, are absolutely accurate. I am coming now to Mr. Whiteley's point, to compare the companies which are in the hosiery division here with the total. It is true that in the case of such a company as Penmans they do produce full-fashioned hosiery and many other such things, but their hosiery production will not appear in these figures of reporting companies. Their hosiery production is in the total.

The COMMISSIONER: In the total which I have already seen ?

Mr. KELLOCK: Yes. In other words I am making the closest comparison i$ is possible to make on the figures here. My figures of totals are absolutely correct, but in the hosiery division of the companies before Your Lordship there will be some companies who

Mr. H. H. Boyer cont.

Mr. WILLARD: Later on, when Mr. Walker gives the figure for knit goods, he shows the commodities that are included under knit goods as having a larger production than the knit goods figure would indicate, owing to the hosiery.

Mr. BOYER: Pyjamas would be one of the least successful ones according to my friend's suggestion.

The COMMISSIONER: That is to say, they do not appear quite large.

Mr. BOYER: No, but under knit goods. But they are in the $37,000,000 production of hosiery.

Mr. WILLARD: The figures for domestic production, imports and exports of hosiery, are absolutely accurate. I am coming now to Mr. Whitney's point, to compare the commodities which are in the hosiery division with the total. It is true that in the case of such a commodity as pyjamas they do produce full-fashioned hosiery and many other such things, but their hosiery production will not appear in these figures of reporting companies. Their hosiery production is in the total.

The COMMISSIONER: In the total which I have [illegible]

Mr. [illegible]: In other words I am saying the [illegible] is possible to make on the figure [illegible] of totals are absolutely accurate, but it was [illegible] of the [illegible] hosiery that similarly those will be [illegible]

have some hosiery production which will not be included. I have no way of getting at that. And now I should like to conclude paragraph 9:

"It is submitted that these are not undue returns for manufacturing enterprises of this nature. In 1930 the net profits dropped to 6.4 per cent and were 7.0 per cent in 1931, 5.8 per cent in 1932, 6.6 per cent in 1933, 7.8 per cent in 1934, and 8.4 per cent in 1935. It will be noted that following the increase in the hosiery tariff of 1930 the net profits earned on shareholders' equity were only approximately half of what they were in the 1926-1929 period. It is submitted that these figures prove that the industry in Canada did not take undue advantage of the tariff of 1930 to make larger profits than before the increased tariff was put into force."

And that applies to any price discussions that took place in 1930. The year 1932 was the year in which there was the lowest return to the shareholders. Dealing with some of these companies, I take the Supersilk Hosiery Company.

"In Exhibit 1147 the commission auditor deals with the financial records of some individual companies. I desire to draw your attention to the page which contains a statement of the affairs of the Supersilk Hosiery Company Limited, as I desire to point out an unfortunate

have some hosiery production which will not be included. I have no way of getting at that. Now I should like to conclude paragraph 5:

"It is submitted that these are not undue returns for manufacturing enterprises of this nature. In 1920 the net profits dropped to 0.4 per cent and were 7.4 per cent in 1921, 5.8 per cent in 1922, 6.6 per cent in 1923, 7.2 per cent in 1924, and 8.4 per cent in 1925. It will be noted that following the increase in the hosiery tariff of 1930 the net profits earned on stockholders' equity were only marginally half of what they were in the 1920-1929 period. It is submitted that these figures prove that industry in Canada did not take undue advantage of the tariff of 1930 to make larger profits than before the increased tariff was put into effect.

And that applies to any price discussions that took place in 1930. The year 1932 was the year in which there was the lowest return to the shareholders. Dealing with some of these companies, I take the superior Hosiery Company.

"In Exhibit 1147 the commission analyzes with the financial records of some individual companies. I desire to draw your attention to the very vital contains a statement as the effect of the Canadian Knitter Industry Limited, of Toronto, of which Mr. Joseph Sedgwick

"error which makes it appear that this company was more profitable than it actually was. And an examination of the commission auditor's exhibit reveals the fact that in the years 1932, 1933, 1934 and 1935 the dividend on preferred stock was not paid in full. The amounts which should have been paid and were not paid are as follows:

1932	$8,853.25
1933	17,601.50
1934	17,354.75
1935	17,083.50 "

In the period from 1932 to 1935 the result of this omission can be seen by comparing the commission auditor's exhibit with a correct statement.

Mr. McRUER: This does not make any difference to my brief, because I have submitted my views. I have dealt with the earnings on capital invested in the industry, and what my friend sets out in the brief in this connection would not change that.

Mr. KELLOCK: It does not affect that; I am presenting my own point of view. The correct statement is as follows:

"Commission Auditor's Table

	Revenue Applicable to Common stock equity	% to Common Stock Equity
	$	
1932	120.06	.9
1933	17,575.64	61.9
1934	2,055.14	3.6
1935	14,950.07	19.0

Correct Table

	Revenue Applicable to Common Stock Equity	% to Common Stock Equity
	$	
1932	8,733.19 Red	68.2% Red
1933	25.86 Red	0.1% Red
1934	15,299.61 Red	27.6% Red
1935	2,133.43 Red	2.7% Red

"Upon which it appear that the Company was more profitable than it actually was. And an examination of the commission auditor's exhibit reveals the fact that in the years 1921, 1923, 1924 and 1925 the dividend on preferred stock was not paid in full. The amounts which should have been paid and were not paid are as follows:

1922	$8,750.25
1923	17,001.50
1924	17,044.75
1925	17,050.50 "

In the period from 1922 to 1925 the result of this omission can be seen by comparing the commission auditor's exhibit with a correct statement.

Mr. [illegible]: This does not make any difference to my brief, because I have submitted my views. I have dealt with the earnings on capital invested in the industry, and what my friend sets out in the brief in this connection would not change that.

Mr. [illegible]: It does not affect that; I am presenting my own point of view. The correct statement is as follows:

"Commission Auditor's Table

Earnings Applicable to Common Stock	Dividends Paid	Earnings Applicable to Common Stock	Dividends Paid
$	$	$	$
1920 [illegible]	[illegible]	[illegible]	[illegible]
1921 [illegible]	[illegible]	[illegible]	[illegible]
1922 [illegible]	[illegible]	[illegible]	[illegible]
1923 [illegible]	[illegible]	[illegible]	[illegible]

Mr. McRUER: Was the deferred dividend cumulative in this case ?

Mr. KELLOCK: Yes, in the case of the Supersilk Hosiery Company it was cumulative. So that the result is seen all the way through. Instead of there being, as the exhibit says, a return of 61.9 per cent to common shareholders' equity in 1933 it was 0.1 per cent in the red; instead of 3.6 per cent in 1934 it was 27.6 per cent in the red; and instead of 19 per cent of a return in 1935 it was 2.7 per cent in the red.

The COMMISSIONER: What is this company, it must be a small one.

Mr. KELLOCK: It is a purely full-fashioned hosiery company.

Mr. McRUER: It is a small company.

The COMMISSIONER: It must be.

Mr. McRUER: We did not put it forward at all in our brief.

TheCOMMISSIONER: You have $17,500 making a 61.9 per cent return to common stock equity; that seems to be a small company. I suppose you would classify this company as an unsuccessful one.

Mr. Mc RUER: I do not think one can do that, My Lord.

The COMMISSIONER: I am asking Mr. Kellock how he would classify it..

Mr. McRUER: In 1931 it earned 11.5 per cent on the capital employed.

Mr. Hellyer: Yes, in the case of the Imperial Hosiery Company it was cumulative. So that the result is seen all the way through. Instead of three years, as the exhibit says, a return of 6.4 per cent to common shareholders' equity in 1935 it was 0.1 per cent in the red; instead of 5.6 per cent in 1934 it was 37.5 per cent in the red; and instead of 10 per cent of a return in 1933 it was 2.7 per cent in the red.

The CHAIRMAN: That is this company. It must be a small one.

Mr. Hellyer: It is a purely full-fashioned hosiery.

Mr. Lawson: It is a small company.

The CHAIRMAN: It must be.

Mr. Lawson: We did not put it forward at all in our brief.

The CHAIRMAN: You have 17,000 showing a 6.4 per cent return to common stock equity; that seems to be a small amount. I am sure you would agree with this.

Mr. Lawson: I do not think one can do that. I am [illegible]

[illegible] I am talking [illegible] [illegible] [illegible]

Mr. Hellyer: If that is correct I am [illegible] the [illegible]

The COMMISSIONER: Whatwas the capital ?

Mr. KELLOCK: I have the figures here. In 1926 Mr. Howson's figure is $56,130 and in 1935 it was $746,102.

The COMMISSIONER: From $56,000 ?

Mr. KELLOCK: Yes.

Mr. McRUER: In 1926 the return was 33.2 per cent on capital employed, so that it has not had bad times.

Mr. KELLOCK: That is misleading, unless you know what capital employed is.

Mr. McRUER: It is the money employed; there is nothing misleading about it.

The COMMISSIONER: The capital employed in 1926 was $56,000 ?

Mr. McRUER: Yes.

The COMMISSIONER: And how much is it now ?

Mr. KELLOCK: It is $746,000.

Mr. McRUER: In 1935 they had 6.4 per cent--no, that is on sales; it was 5.7 per cent.

The COMMISSIONER: On the capital employed ?

Mr. McRUER: Yes.

Mr. KELLOCK: That is on the basis of Mr. Howson's figures. Here, My Lord, I am dealing with what the shareholders themselves got; I am showing what their experience was.

The COMMISSIONER: Did they have to pay interest on bonds ?

Mr. KELLOCK: Up to 1927 they had bank loans, and again in 1935, on the particular day Mr. Howson

took, they had a bank loan of $179,507. It does not show the interest.

The COMMISSIONER: Would there be interest on bonds as well ?

Mr. KELLOCK: There were no bonds apparently.

Mr. HOWSON: No bonds, no.

Mr. KELLOCK: And that is before income tax was taken into account. Then I submit that the comparison which I am coming to, in the table which the auditor uses, shows that the effect was to indicate that the company earned more than it actually did, and I am dealing here with its net profits and sales. I quote from the brief:

"Also in regard to this company the commission auditor's figures purport to show 'net profit' (Exhibit 1147) both in dollars and as a percentage of sales. But so-called 'net profit' is before income tax. It is submitted that the following comparison of the commission auditor's table with a correct table shows that the effect was to indicate that this company earned more than it actually did earn:

	Commission Auditor's Table		Submitted Correct Table	
	'net profit'	% to Sales	Net Profit after Income tax	% to Sales
1926	18,630.45	9.0	18,630.45	9.0
1927	14,514.81	11.4	13,167.74	10.3
1928	11,633.78	2.5	10,389.90	2.2

book, they had a bank loan of $175,527. It does not
show the (inaudible):

[illegible]: Would that be interest or
bonus in kind?

Mr. KELLOCK: There were no bonus apparently.

[illegible]: In [illegible], sir.

Mr. KELLOCK: And that is before income tax was
taken into account. When I submit that the commer-
cial which I am coming to, in the book which the
auditor chose, shows that the effect was to indicate
that the company earned more than it actually did,
and I am dealing here with its net profits and sales.
I quote from the text:

"Also in regard to this company the commercial
auditor's figures purport to show 'net profit'
(Exhibit 147) both in millions and as a percentage
of sales. Net so-called 'net profit' is
before income tax. It is submitted that the
following comparison of the commercial auditor's
table with a correct table shows that the effect
was to indicate that company earned more
than it actually did earn:

Commission Auditor's Table		Submitted Correct Table
'net profit'	% to sales	net profit after income tax
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

1929	35,249.64	7.6	34,498.44	7.5
1930	57,815.59	8.6	55,105.40	8.2
1931	61,161.23	9.8	54,942.30	8.8
1932	35,082.27	6.5	26,882.81	4.9
1933	38,801.41	7.0	35,177.14	6.4
1934	22,885.27	3.9	20,131.38	3.4
1935	42,380.32	6.4	34,496.44	5.2"

The COMMISSIONER: Is the only difference between the two tables the matter of income tax ?

Mr. KELLOCK: Yes, My Lord, and in cases where there was a bank loan, interest on the loan. The outside column shows the actual net profit on the sales of the company, the number of cents in every dollar which the company really realized.

"The business of the Supersilk Hosiery Company is entirely the production and sale of full-fashioned hosiery, and it is submitted that the figures presented show that this type of business requires a substantial net profit on sales. It will be seen that while this company in 1932 made a net profit of 4.9 per cent on sales it was in the red to the extent of 68.2 per cent on the common stock equity; in 1933 with a net profit of 6.4 per cent on sales, was in the red to the extent of 0.1 per cent on net equity; in 1934 with a net profit of 3.4 per cent on sales, the company was in the red of 27.6 per cent on net equity; and in 1935, with a net profit of 5.2 per cent on sales was in the red to the extent

The Honorable MEMBER: Is the only difference between the two tables the matter of income tax?

Mr. KENNEDY: Yes, my lord, and in cases where there was a loss loss, interest on the loan. The actual figure shows the actual net profit on the sales of the company, the amount of sales in every dollar which the company really realizes.

The business of the company in question and sale of milk-products company, and it is misleading that the figures presented show that this type of business requires a substantial net profit on sales. It will be seen that while this company in 1932 made a net profit of 4.7 per cent on sales it was in the red to the extent of 24.2 per cent on the common stock equity; in 1933 with a net profit of 0.4 per cent on sales, was in the red to the extent of 0.1 per cent on net equity; in 1934 with a net profit of 2.4 per cent on sales, the company was in the red of 27.6 per cent on net equity; and in 1935, with a net profit of 1.6 per cent on the sales, [illegible]

"of 2.7 per cent on the shareholders' net equity. It is submitted that the increase in tariff in 1930 did not enable this company to make any undue profits."

In your brief the year 1936 should be the year 1930.

"This full-fashioned hosiery company in the years 1932 to 1935 produced and sold $2,345,204.92 worth of hosiery (Exhibit 1147), and gave employment, (not including office or sales staff), to 190 people in 1932, 193 people in 1933, 265 people in 1934 and 311 people in 1935, paid out wages during this four-year period (not including office management and sales salaries) amounting to $588,310.60 (Exhibit 1214), and as a result of all their efforts and risk did not succeed in earning their preferred stock dividends in any of the four years, the total arrears amounting to $26,192.06. I would point out specially to Your Lordship that while this company was carrying on an unremunerative business during this four-year period they were maintaining and increasing the number of their employees."

Mr. McRUER: Before Mr. Kellock goes on, there is a matter I wish to touch upon arising out of a question which Your Lordship asked Mr. Kellock during the course of argument a day or two ago, and that was with respect to Canada's position asan exporting nation. I believe the statement was made that Canada was fifth as an

"SC 3.7 The MAY of the shareholders' investment.

It is submitted that the increase in tariff in 1930 did not enable this company to make any [illegible].

In your brief the year 1936 should be the year [illegible].

"This full-fashioned hosiery company in the years 1928 to 1936 produced and sold $2,355,204.00 worth of hosiery (Exhibit 1147), and gave employment, (not including office or sales staff), to 190 people in 1928, 186 people in 1929, 242 people in 1934 and 321 people in 1936. Paid out wages during this four-year period (all including office management and sales salaries) amounting to $688,310.50 (Exhibit 1214), and as a result of all their efforts and risk did not succeed in earning their preferred stock dividends in any of the four years, the total arrears amounting to $84,140.00. I would point out specially to Your Lordship that while this company was carrying on an unremunerative business during this four-year period [illegible] and investing the number of their employees."

Mr. [illegible]: Before Mr. Hallock goes on, there is a matter I wish to touch upon arising out of a question which Your Lordship asked Mr. Hallock during the course of argument a day or two ago, and that was with reference to [illegible] [illegible] [illegible]. I believe the statement [illegible] [illegible] [illegible] of an

exporting nation. In the budget speech which has been filed as Exhibit 1346, at page 48, the statement is made that Canada is now fourth among the nations in export trade, while retaining fifth place in the total of trade. As an exporting nation we are fourth, but in total trade we are in fifth place, and a table is given showing imports into Canada in the years 1935 and 1936. The total imports in 1936 were $635,190,844 and the total exports of Canadian produce were $1,015,205,435, and foreign produce $12,696,519. In this regard I think it might be useful to the commission if Your Lordship would direct Mr. Whiteley to prepare a table from the records of the Bureau of Statistics, showing how the exports and imports are made up with the world at large running over a period of years. We have quite an elaborate table--I believe it is Exhibit 666--in connection with trade with Japan. That seems to be only one section of it and there are other nations such as the United States, France, Switzerland, the Netherlands and Italy, with which in the past we have done a large trade.

exporting nation. In the budget speech which has been filed as exhibit 1946, at page 40, the statement is made that Canada is now fourth among the nations in export trade, while retaining fifth place in the total of trade. As an exporting nation we are fourth, but in total trade we are in fifth place, and a table is given showing imports into Canada in the years 1939 and 1945. The total imports in 1945 were $[illegible], and the total exports of Canadian produce were $1,015,905,425, and foreign produce $[illegible]. In this regard I think it might be useful to the commission if your lordship would direct me. Shortly to produce a table from the reports of the [illegible] statistics, showing how the exports and imports are made up with the world at large running over a period of years. We have quite an elaborate table--I believe it is exhibit 966--in connection with trade with Japan. That seems to be only one section of it and there are other nations such as the United States, France, Switzerland, the Netherlands and Italy, with which in the past we have done a large trade.

THE COMMISSIONER: Yes, that information must be available because I had it on the grain Inquiry Commission at Winnipeg. Mr. Whiteley could do it.

MR. McRuer: Yes, that is right in his line if he could be directed to prepare that because I cannot see that our investigation could be complete without that information. We have it as to our position as a trading nation and I think we ought to have with whom we trade, because we are ---

THE COMMISSIONER: That could be had very easily. We come fourth now as exporters. The three ahead of us are Great Britain---

MR. McRUER: They are not mentioned here. I was just going to ask Mr. Whiteley to get that.

THE COMMISSIONER: The United States and Japan. Which one did we pass during the year?

MR. RENE: France.

MR. KELLOCK: My lord, during the intermission I have added Exhibit 1351.

THE COMMISSIONER: I gave those copies to Mr. Whiteley.

MR. KELLOCK: Those are the figures upon which the percentages above are based.

THE COMMISSIONER: Did you do the same with the other Exhibit?

MR. KELLOCK: The figures, my lord, for Exhibit 1342 are in Exhibit 1324.

MR. McRUER: What section of your Brief is this?

THE CHAIRMAN: Yes, that information must be available because I had it on the people leaving Manchukuo at Dairen. Mr. Smirnov could do it.

MR. MOSER: Yes, that is right in the time if we could be directed to prepare this because I cannot see that our investigation could be complete without that information. We have it as to our position as a Chinese Eastern and I think it would be have with them as trade, because we are ---

THE CHAIRMAN: That could be had very easily. We have because we are interested. The other areas of us are Japan primarily---

MR. MOSER: They are not mentioned here. I was that going to ask me. Primarily to Japan.

THE CHAIRMAN: The United States and Japan. Which one did we pass during the year?

MR. SMIRNOV: Japan.

MR. MOSER: My lord, during the information I have under consideration.

THE CHAIRMAN: I gave those copies to Mr. Mirsky.

MR. MOSER: These are the figures upon which the conclusions above are based.

MR. [illegible]: Did you do the same with the [illegible] analysis.

MR. [illegible]: Mr. Chairman, on June, the [illegible] lines are in [illegible] Line.

MR. MOSER: That [illegible] Line.

THE COMMISSIONER: I know that. I thought these also were.

MR. KELLOCK: No, they are not; they are taken direct from the Trade of Canada.

THE COMMISSIONER: The thing is I asked Mr. Whiteley to put these dollars in both these exhibits and probably he has done that. I think he is doing it now.

MR. KELLOCK: Then I am at paragraph 11, my lord, dealing with the Weldrest Hosiery Company:

> "Another unfortunate error, which also has the result of making the company reported on appear more profitable than it actually was, is to be found in the Commission Auditor's report on the Weldrest Hosiery Company Limited...."

And this Company only makes full-fashioned hosiery.

> "...The most cursory examination of this report shows that no dividends were paid on the preferred stock in this company in the years 1931 and 1932, and that only part of the preferred dividend was paid in 1933 and 1934 while on the other hand, a small amount of arrears ($2,714.25) was paid in 1935."

And I set out what the arrears of preferred dividends were in the various years 1931 to 1934, and I compare Mr. Howson's exhibit, after making this correction. In 1931 he shows $1,992.83 applicable to the common stock equity, percentage of 0.9%. Actually it was $19,040 short of there being anything for the common

stock equity and that is 8.3% in the red. In 1932 he shows $4,007.00 or 1.9% available whereas it was $17,025.56 short or 8.2% in the red. In 1933 he shows $14,230.37 available or 17.7%. Actually there was only $1,555.12 or 1.5%, and in 1934 he shows $24,670.24 or 23.0% available and actually there was only $9,355.99 or 8.7% available. I say:

"It is clear that the Commission Auditor's report shows that this company made a small profit on its common stock equity in 1932 of $1,992.83."

THE COMMISSIONER: Look in your figures there. You have in the fourth column, "Net revenue applicable to common stock equity, "19,040.42 Red, and the next column you have 8.3%.

MR. KELLOCK: That should be 8.3% red, my lord. And the rest of that paragraph really discusses that table so that I do not need to read it, my lord. I say:

"As with other companies, the Commission Auditor's report on this company deals with the figures in such a way that the company appears more successful than it actually is."

MR. McRUER: That is not correct.

MR. KELLOCK: I submit not:

"The Exhibit for example contains a table which purports to show the 'net profits from operations, % to sales.' Here again no allowance is made for income tax and bank interest

stock equity and [illegible] in the red. In 1932 he shows $4,027.00 or 1.0% available surplus if was $17,063.86 short or 6.8% in the red. In 1933 he shows $14,830.27 available or 17.7%. Actually [illegible] was later $1,[illegible] or 1.5%, and in 1934 he shows $[illegible] or [illegible]% available. I say:

It is clear that the Consolidation Auditor is [illegible] shows that this company made a small profit on its common stock equity in lieu of $1,[illegible], [illegible] have it your figures [illegible]. You have in the fourth column, "Net revenue applicable to common stock equity", "19,060.41 red", and the book column you have [illegible].

Mr. Kelloch: That should be 6.4% red, my lord. And the rest of that paragraph really discusses that more so than I do not need to read it, my lord.

I say:

"As with other companies, the Consolidation [illegible] report on this company [illegible] in such a way that the company appears less successful than it actually is."

Mr. Martin: That is [illegible].

Mr. Kelloch: I [illegible]:

"The [illegible] which purports to show [illegible] equipment, [illegible] allowance is made for [illegible]

As an example, this omission results in showing the percentage to sales in 1931 as 2.5% whereas they were actually 0.3%, and in 1933, 4.9%, when they were actually 2.9%.

The Weldrest Hosiery Co. in the 4 years period 1931 to 1935 inclusive..."

That is really five years, I am sorry.

"....produced and sold $3,223,698.53 worth of full fashioned hosiery, gave employment (exclusive of management, office and sales staff) to 407 people in 1931, 420 people in 1932, 393 people in 1933 and 390 people in 1934, paid outwages (not including office management and sales amounting to $1,037,883.36..."

THE COMMISSIONER: You do not go on to 1935 there? You say you corrected yourself.

MR. KELLOCK: Yes, my lord, I am very sorry. My original statement is correct. It should remain as 4.

"...for the 4 years period, and as a result of all their efforts and risks in the raw material market did not earn their preferred stock dividend, the amount in arrears being $25,154.87."

And I submit th t those things create false impressions in the mind of the public in relation to the industry even if these arrears are point out.

As an example, this omission results in showing the percentage to sales in 1931 as 2.3% whereas they were actually 4.3%, and in 1932, 4.9%, when they were actually 3.2%.

5 The witness further in. As you I must qu[illegible] 1931 to 1935 inclusive..."

That is really five years, I am sorry.

"....produced and sold $8,250,000.00 worth of full fashioned hosiery, gave employment (exclusive of management, office and sales staff) to 407 people in 1931, 420 people in 1932, 338 people in 1933 and 320 people in 1934, plus outwages (not including office management and sales amounting to $1,097,000.00."

10

THE COMMISSIONER: You go on and go on to 1935 there? You say you corrected yourself.

15

MR. MILLER: Yes, my lord, I am very sorry. The original statement is correct. It should read

20

-- 1.

"...for the 4 years period, and as a result of all their efforts and risks in the raw material market did not earn their preferred stock dividend, the amount in arrears being $[illegible]."

25

And I submit that these things create false impressions in the mind of the public in relation to the industry even if these arrears are point out.

30

And then I come to the Canadian Silk Products Company and there is another error here.

"In Exhibit 1147 is set out what purports to be a summary of operations for the period 1926 to 1935. This summary purports to show the net return on the common shares and shows a so-called 'net revenue applicable to common stock equity,' as a percentage of a so-called 'common stock equity'. As will be seen from this report, this company has $500,000 preferred shares outstanding. This ignored is

(1) These $500,000 preferred shares are properly known as "A" shares and are preferred as to dividends over the company's "B" shares to $1.50 per share, but....."

MR. McRUER: Are they not all owned by the same person?

MR. KELLOCK: I do not know that there is any evidence that deals with who the shareholders are.

MR. McRUER: They are all owned by one company.

MR. KELLOCK: What is "all owned by one company?"

MR. McRUER: It is the Canadian Silk Pruducts Incorporated, I think it is. The answer to the Questionnaire shows ---

MR. KELLOCK: Which company are you speaking of - the holding company or the operating company?

MR. McRUER: My recollection was that Mr. Thompson and one or two of his associates own the whole of this Company. They own the Canadian Silk Products Incorporated

and then I come to the Canadian Milk Products Corp.,
and there is another error here.

"In exhibit 1147 is set out what purports to be a
summary of operations for the period 1945 to 1948.
This summary purports to show the net return
on the common shares and shows a so-called 'net
revenue applicable to common stock equity,' as a
percentage of a so-called 'common stock equity'.
As will be seen from this report, this company has
no, no preferred shares outstanding. This
figure is

(1) Those only preferred shares are properly
shown as 'net income' and are referred to as
'income over the company's 7% preferred' in
charts, but....."

Q. Mr. Gill: Are they not all owned by the same
A. Witness: I do not know that there is any
evidence that shows its who the shareholders are.
Q. Mr. Gill: They are all owned by one company.
A. Witness: What is "all owned by one company"?
Q. Mr. Gill: It is the Canadian Milk Products
Corp. owned, I think it is. The answer to the
question stands ——

Q. Mr. Gill: What company are you speaking of -
the holding company or the operating company?
A. Witness: My recollection was that Mr. Ingersoll
had one or two of its associates own the whole of this
company. They own the Canadian Milk Products Corporation

and that company owns Canadian Silk Products or vice versa- I have forgotten which.

MR. KELLOCK: I think the result of what my friend says there are comparatively few shareholders but that does not alter the situation as between what is coming on the preferred shares and what is left for the "B" or common shares.

MR. McRUER: Of course does not make any difference in the way I deal with it..

MR. KELLOCK: Of course, I do not altogether approve of the way you deal with it. You do not deal at all with what the shareholders got.

MR. McRUER: Yes, I dealwith it. I deal with the returns on the capital employed.

MR. KELLOCK: You deal with the capital on one day of the year which included borrowed capital from the bank. You never considered in any place what the shareholders themselves got out of it.

MR. McRUER: Yes. In this very company I say a man invested $41,000 and has an equity of $1,200,000.

MR. KELLOCK: My friend never deals with what is coming to the shareholders of the company in the way I am dealing with it, my lord, and that is what is return in any one year to the shareholders of the company, and I am dealing with these companies particularly from the standpoint of what the shareholders

Income Tax Act.

Mr. [illegible]: I think the result of what my friend says there are comparatively few shareholders but that does not alter the situation as between what is coming on the preferred shares and what is left for the ordinary or common shares.

Mr. [illegible]: Of course does not make any difference in the way I deal with it.

Mr. [illegible]: Of course, I do not [illegible] of the way you deal with it. You do not deal at all with the shareholders yet.

Mr. [illegible]: Yes, I really do. I deal with returns in the capital employed.

Mr. [illegible]: You deal with the capital on one day of the year when dividend borrowed or lent from the bank. You never considered in any place what the shareholders themselves got out of it.

Mr. [illegible]: Yes. In this very company - say a man invested $41,000 and has an earning of $4,000.

Mr. [illegible]: My friend never deals with any of the shareholders of the company in the way [illegible]

got because I wanted to discuss the effect, if any, of any price discussion, if any, that these companies took part in.

And I say secondly, at the top of page 9:

"No provision is made in determining the so-called 'net revenue applicable to common stock equity' for the earnings which would accrue to the "A" shares."

That is, this $1.50 to which the "A" shares are entitled before the "B" shares get anything is overlooked again in the preparation of this Exhibit, and the result is shown in the table which I set out in that page that the net revenue applicable to the "A" and "B" shares (both ranking equally after $1.50 paid on "A" shares), that in 1930 there was $247,202.20 available.

THE COMMISSIONER: That is for the "B" shares.

MR. KELLOCK: That is for both, my lord, after deducting $1.50 on the "A" shares, and the percent to the Common Stock Equity as reported by Mr. Howson is 80.1%, and it is actually ---

MR. McRUER: Where did you get your information as to Class"A" shares participating in this way?

MR. KELLOCK: It should be on the Returns.

MR. McRUER: Mr. Howson has compiled this from the information that this Company gave him. They were in the Witness Box - Thompson was in the Witness box for some time and the Auditor was in the Witness box.

and because I wished to discuss the effect, if any, of any price discrimination, if any, that these companies took part in.

and I say accordingly, at the top of page 4:

"The provision to make it determining the so-called 'net revenue applicable to common stock equity' for the earnings which really serve to the 'r' charges."

That is, this 11.50 to which the "a" charges are split before the "r" charges get anything is overlooked again in the preparation of this exhibit, and the result is shown in the table which I set out in that page that the net revenue applicable to the "r" and "r" charges (both common and preferred) after 11.50 is not material, that is less than one half of one cent.

THE COURT REPORTER: Look at for the "r" charges.

Mr. Hellmuth: That is for both, by loss, after deducting 11.50 on the "a" charges, and the account to the Common stock equity is re-order by the Commission is 50.17, and it is accordingly ---

Mr. [illegible]: It should be on the [illegible].

Mr. Hellmuth: Mr. [illegible] the [illegible] information and this [illegible] [illegible]

Cook was in the Witness box.

MR. KELLOCK: I am told that is the fact.

THE COMMISSIONER: You must not attribute to Mr. Howson something that he did not ---

MR. KELLOCK: No, if Mr. Howson did not have the information he could not have done otherwise than he did.

THE COMMISSIONER: You are assuming here on the basis that he took. Apparently that is not so.

MR. KELLOCK: I assumed that this information was in the returns. If it is not there then I cannot criticize.

THE COMMISSIONER: Mr. Howson worked on the returns that he got from the Company.

MR. McRUER: We do not know if this information is correct or not.

THE COMMISSIONER: How does it come before me now. The only evidence I know of is the evidence of the Return.

MR. KELLOCK: This was only my instructions.

THE COMMISSIONER: I think you should have made more careful enquiry as to what the returns were.

MR. KELLOCK: I quite agree. It should have been in the Return and I assumed it was there. The result is, however, as I have shown it for 1930. 1931 instead of the percentage to common stock equity being 67.3%, it is only 26.9%. In 1932 instead of being 63.3% it is 27.6%. In 1933 instead of 47.3% it is 22.9%. In 1934 instead of 34.4% it is 17.4%.

book was in the witness box.

Mr. MILLOCK: I am told that is the fact.

HIS LORDSHIP: You must not attribute to Mr. Hosson something that he did not ---

Mr. MILLOCK: No, if Mr. Hosson did not make the information he could not have done otherwise than he did.

HIS LORDSHIP: You are assuming here on the basis that he took. Apparently that is not so.

Mr. MILLOCK: I assumed that this information came in the returns. If it is not there then I withdraw criticism.

HIS LORDSHIP: Mr. Hosson stated on his examination that he got from the Company.

Mr. MILLOCK: We do not know if this information is correct or not.

HIS LORDSHIP: You have it some source or other. The only evidence I have of it is the evidence of the Rabbi.

Mr. MILLOCK: This was only by instructions.

HIS LORDSHIP: I think you should have some corroborative evidence as to what the returns were.

Mr. MILLOCK: I quite agree. It should have been in the return and I assumed it was there. The result is, however, as I have shown it for Jews. Total income of the persons in common stock equity being 67.3%, it is only 45.4%. In 1934 instead of being 54.3% it is 27.8%. In 1933 instead of 47.5% it is 22.3%. In 1932 instead of 34.4% it is 17.4%.

and in 1935 instead of being 26.1% it is 13.8%.

THE COMMISSIONER: That is, if those facts are as you are assuming them to be.

MR. KELLOCK: Yes, my lord.

MR. McRUER: What is your contention - that the "A" shares are preferred shares?

MR. KELLOCK: Yes.

MR. McRUER: And then the dividends are paid on that first.

THE COMMISSIONER: As to dividends, I understand "A" shares first get $1.50 and if anything left it is divided among them equally.

MR. McRUER: Was that done? Were there any dividends paid on the "A" shares? $926,000 were paid in dividends by this Company.

THE COMMISSIONER: That is in these five years?

MR. McRUER: Well, no, it was longer than that. In 1924 they started in business with a total investment of $48,000. They had some preferred shares all of which were redeemed and they had some bonds, $60,000, all of which were redeemed. Then in 1929 the Canadian Silk Products Corporation Limited was incorporated and issued 100 class "A" shares for $500 cash and 99,900 class "A" shares ---

THE COMMISSIONER: That was a new company in place of the old one - is that right?

MR. McRUER: And it acquired all the shares of Canadian Silk Products Limited. That was in 1929.

and in 1933 instead of being 26.1% it is 15.5%.

THE COMMISSIONER: That is, if those facts are as you are assuming them to be.

MR. [illegible]: Yes, as here.

MR. MORRIS: That is your contention - that the "A" shares are preferred shares?

MR. [illegible]: Yes.

MR. MORRIS: And then the dividends are paid on [illegible] first.

THE COMMISSIONER: As to dividends, I understand they always first get $1.50 and if anything left it is divided among them equally.

MR. MORRIS: The last dates? Were there any dividends paid on the "A" shares? $245,000 were paid in dividends by this Company.

THE COMMISSIONER: That is in these five years?

MR. MORRIS: Well, no, it was longer than that. In 1924 they started in business with a total investment of $48,000. They had some preferred shares all of which were redeemed and they also made some bonds, $60,000, all of which were redeemed. Then in [illegible] was incorporated and issued 100 class "A" shares for $500 each and 98,900 class "A" shares ---

[illegible]

MR. MORRIS: [illegible]

Between 1925 and 1935 the Company's net earnings from manufacturing operations after payment of income taxes, amounted to $2,159,30.44. Profits were made on securities sold amounting to $33,770.79. Out of these earnings $926,032.50 were paid in dividends, and $1,267,068 remain as undistributed surplus and reserve. Outside of $150,609 written off for loss on investments, the remainder of the earnings still remain with the company as undistributed surplus and reserve.

On their Return to the Commission they just show dividends paid and they show no distinction between the two classes of stock on which dividends are paid, so that I think my friend is introducing a refinement into it.

MR. KELLOCK: The dividends paid, if my instructions are right, could only have been paid on that basis.

MR. McRUER: That is not what they said in their return. Does not make much difference, they made enough money.

MR. KELLOCK: Out of 10 companies that Mr. Howson deals with and ignores the fact that preferred dividends were either not paid at all or paid only in part, this is the only one where apparently it was not shown in the returns.

MR. McRUER: Now, my friend can make attacks on me but I am not going to permit him to make attacks on Mr. Howson. He says that he ignores the facts, &c.

What happened was - it was an oversight in the making up of these statements and I told my friend when it came up, when it was pointed out, and I said in my opening argument that we agreed with him in respect to these preferred dividends that were shown tobe cumulative that that was a proper adjustment to make in regard to the common stock equity. It makes no difference on the basis on which I submitted my argument and that was return on capital invested.

THE COMMISSIONER: They were a charge on the net profits?

MR. McRUER: Yes, but wen you take a return on common stock equity my friend is quite right. It was what you have to do in order to determine whether dividend is cumulative or not, preferred dividend that is not paid whether cumulated or not - you have to go back and get the status of the preferred stock, &c., and in an oversight of Mr. Howson's staff it was overlooked but to say it was ignored is not fair to Mr. Howson at all.

MR. KELLOCK: I have not any desire to say ignored or anything else? I am quite satisfied it was an oversight.

THE COMMISSIONER: Inadvertently omitted.

MR. KELLOCK: I am quite satisfied to amend my language because I have no desire to be personal with anybody in this inquiry or in any piece of litigation I may be in at any time. I am merely giving it

from the standpoint what the shareholders did or did not get and it is not correct, the reason being pure oversight.

I come to deal with "Results of 8 Hosiery Mills' operations" taken together and I draw attention to the fact that in dealing with hosiery companies my friend has commented on the tables in exhibit 1155 which are described as "8 representative companies sales, which did 86.2% of the total business - this is my friend's contention,

> "....which did 86.2% of the total business of all the reporting companies during the year 1926, and 58.9% of the total business of all the reporting companies during the year 1935. This statement appears to be accurate as far as it goes, but these 8 companies do not represent anything like this proportion of the hosiery business done in Canada. The figures are from Exhibit 1155 and in 1926 the sales of these 8 companies were $4,810,856, but the production of hosiery in Canada was $18,107,049 and percent of (1) to (2) 26.6%. In 1934 these companies had sales of $6,902,015. Production of hosiery in Canada in that year was $18,758,341 or 36.8%.
>
> "It will, therefore, be seen that these so-called representative companies represented not more than 27% of the hosiery produced in

not get and it is not correct, the reason being pure overlight.

I came to feel like "cowhide" of a "dairy milk" operations" taken together and I drew attention to the fact that in dealing with dairy companies my friend has commenced on the tables in exhibit 1185 which are described as "8 representative companies only, which did 86.8% of the total business - this is my friend's contention.

"....which did 86.8% of the total business of all the converting companies during the year 1920, and 88.4% of the total business of all the [illegible] companies during the year [illegible].

This statement appears to be accurate in that as it goes, but these 8 companies do not represent anything like this proportion of the dairy business done in Canada. The figures are from exhibit 1185 and in 1918 the sales of these 8 companies were $4,810,856, but the production of dairy in Canada was $15,107,040 and percent of (1) to (2) 28.8%. In 1924 these companies had sales of $6,306,010. production of dairy in Canada in that year was $21,[illegible] or [illegible].

It will, therefore, be seen that these selected representative companies [illegible]

1926 and less than 37% of the hosiery produced in Canada in 1934. It is submitted, therefore, that this sample is not 'representative' because the list consists of companies that 'have all been in business during the whole ten years', and does not include a number of companies which were not so successful as those included in the sample.

The Commission Counsel in his factum (page 242) states that the net profit on capital employed in operations results in a low of 9.9% to a high of 14.1% in the period from 1926 to 1935. I submit that the so called 'net profit' is not net profit and that before obtaining a 'net profit' it is necessary that income tax and bond interest be deducted.

Still dealing with these eight so-called representative companies the Commission auditor added a table to Exhibit 1155 which showed the net profit on sales for the ten years period, 1926 to 1935, to have been 8.2%. This net profit figure includes miscellaneous income which Exhibit 1155 shows to have amounted to 0.6% of sales. Allowing 15% of this figure for the income tax paid on miscellaneous investment, this brings the net profit on sales to approximately 7.7% for the ten years period under review."

THE COMMISSIONER: Just a minute. You say there at the beginning of paragraph 13 the Auditor refers

this sample is not 'representative' because the companies of companies that 'have all been in business during the whole ten years', and does not include a number of companies which were not so successful as those included in the sample.

The Commission Counsel in his factum (page xiv) shows that the net profit on capital employed in operations results in a low of 0.9% to a high of 14.1% in the period from 1926 to 1932. I submit that the so called 'net profit' is not net profit and that before computing a 'net profit' it is necessary that income tax and bond interest be deducted.

[illegible] added a table to Exhibit 1105 which showed the [illegible] 1926 to 1932, to have been 8.2%. This net profit figure includes miscellaneous income which exhibit 1105 shows to have amounted to 5.5% of sales, allowing 1% of this figure for the income tax paid on miscellaneous income, [illegible] the net profit on sales [illegible] 7.1% for the [illegible] period, [illegible].

[illegible] 1932. When one takes

to these companies as being representative companies. Did he pick them out, these 8 companies, from a largers number?

MR. KELLOCK: Yes, my lord. That Exhibit is called "Representative companies" I gather.

THE COMMISSIONER: How many companies in all were there reporting?

MR. KELLOCK: In 1926 to 1935 there was 9 reporting and in 1926 - 27, as I set out in paragraph 6, until there were 25 mills in the report from 1931 to 1935 inclusive. They had increased to 25.

THE COMMISSIONER: Well then, the 8 in question are taken out of the 25?

MR.KELLOCK: Yes.

MR. McRUER: We deal with them in a separate classification but we dealt with the others altogether. They were also dealt with.

MR. KELLOCK: Then I say, my lord,

"Following the same procedure and dividing the 10 years' period into two periods of 5 years each, the result is a s follows:

Gross revenue from sales, was $3,836,169. Miscellaneous income $94,740 or a total of $3,930,909."

Deducting interest on loans, bond interest and income tax and that leaves a net profit of $3,295,255. Now the sales were $35,134,875. Net profits including miscellaneous income to sales is 9.4%. Miscellaneous

In those days people in Irving were relatively economically
sound in some sense, were it personal, View - Question
answer?

Yes, my lord. That phrase is called
"[illegible]" I believe.

THE COMMISSIONER: How many companies in all were
[illegible]?

MR. MACDONALD: In 1 26 to 1932 there was 9 reported
and in 1932 - 37, as I set out in paragraph 6, until
there were 45 mills in the report from 1921 to 1932
inclusive. They had increased to 85.

THE COMMISSIONER: Well then, the 8 in question
are taken out of the 45?

[illegible]

MR. MACDONALD: I don't think them in a separate
classification but we recall with the other altogether.
They were also dealt with.

MR. MILLER: When I say, my lord,
"Following the usual procedure and dividing
the 11 years' period into two periods of 5 years
each, the result is as follows:

[illegible]

Miscellaneous income $94,740 or a total of
$2,380,309."

[illegible]

income to sales was 0.3% and net profit to sales approximately 9.1%. In 1931 to ---

THE COMMISSIONER: Pardon me a moment. This is the way you do it?

MR. KELLOCK: Yes.

THE COMMISSIONER: How much did Mr. Howson make it, instead of 9.1%. I want to see if you are covering the same thing for the same period.

MR. McRUER: 9.1 to a high of 14.1 in different years, that is for the 10-year period.

MR. KELLOCK: I am dividing it up. I do not think Mr. Howson does divide it up.

THE COMMISSIONER: I want to see how far apart you were. I want Mr. Howson's basis. What would the figure here instead of 9.1%?

MR. McRUER: Well, there are 11 representative companies dealtwith by Mr. Howson.

MR. KELLOCK: No, there are only 8.

MR. McRUER: No, there were 11.

MR. KELLOCK: These I am talking about were dealt with in Exhibit 1155 from page 7, and it specifically says the number included in this summary are 8, all the way across the page.

MR. McRUER: There are two sections and you are only dealing with one.

MR. KELLOCK: Two sections. This deals with all the companies and then deals with this particular group headed "Representative companies."

THE COMMISSIONER: That is the 8?

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: So far as those 8 companies are concerned you take them from 1926 to 1930 inclusive, and you bring down net profit from sales of 9.1%.

MR. KELLOCK: Yes.

THE COMMISSIONER: What does Mr. Howson do in that period? If you are going to offer a comparison it should be readily arrived at.

MR. KELLOCK: Here it is here but Mr. Howson does not do it for the period as I have done it.

THE COMMISSIONER: You see you cannot expect me to sit down later on and try to work this out myself. To have value as a comparison between his method and your method I want to know how your 9.1 looks alongside of whatever figure he arrives at.

MR.KELLOCK: Well, to do that ---

THE COMMISSIONER: Is he 2 % higher or 3%?

MR. McRUER: About 10.9% Mr. Howson says his figures would work out on the 5-year period.

THE COMMISSIONER: That is the one we are at now?

MR. McRUER: Yes.

THE COMMISSIONER: That is sufficient. You have approximately 9.1% against his approximate 10.9%?

MR. KELLOCK: Yes, my lord. What I am doing, my lord, in my presentation is I am approahhing it - showing you, of course, what the companies themselves have done - I am drawing the comparison particularly

THE CHAIRMAN: So far as those companies are concerned you have taken from June to 1940 inclusive, and you bring down net profit from sales of $.[illegible].

MR. [illegible]: Yes.

THE CHAIRMAN: [illegible] period? If you are going to offer a conclusion it should be readily arrived at.

MR. [illegible]: [illegible] not do it for one period as I have done it.

THE CHAIRMAN: You see you cannot expect me to sit down later on and try to work this out myself. To have value as a comparison between his method and [illegible] of achieve figure he arrives at.

MR. [illegible]: Well, we do not ---

THE CHAIRMAN: Is me $ $ minus or not?

MR. McKEON: About 10.5% Mr. Bowen says his figure would work out on the 3-year period.

THE CHAIRMAN: That is the one we are at now?

MR. McKEON: Yes.

THE CHAIRMAN: That is sufficient. [illegible]

MR. [illegible]: Yes, Mr. [illegible]

[illegible]

between the period up to 1930 and after 1930 because I want to argue to your lordship with regard to any detriment so far as any price discussions were concerned-

MR. McRUER: : Do you mean you could take the average companies that were in the agreement and those that were out and average their profits all over the period of years and say: This agreement did not operate to the detriment of the public irrespective of whether Mr. Thompson --

MR. KELLOCK: I don't know that I am arguing anything quite as ridiculous as that. I understood my friend's argument was practically all companies with the exception of two, something of that kind, were parties to these price arrangements.

MR. Mc Ruer: No, in one year they were and other years they were not.

MR. KELLOCK: On page 11 I show the result to be 8.1 %.

THE COMMISSIONER: What does Mr. Howson say about that?

MR. HOWSON: 8.9.

MR. KELLOCK: And I would submit, my lord, even on Mr. Howson's figure that that is not an undue profit having regard to the risks in the industry that are involved.

THE COMMISSIONER: Now, Mr. Howson in making up his 8.9% does not allow for interest on loans, bond interest and income tax.

between the period up to 1920 and after 1920 because I want to argue to your lordship with reason to any [illegible] for my point [illegible]

Mr. [illegible]: : Do you mean you could take the average companies that were in the equipment and those that were out and compare their profits all over the period of years and say: This equipment did not [illegible] to the detriment of the public irrespective of whether it [illegible] --

Mr. [illegible]: I don't know that I am arguing anything quite so ridiculous as that. I understood my friend's argument was [illegible] all companies with the exception of two, something of that kind, [illegible].

Mr. Mc Ker: No, in one year they were and other years they were not.

Mr. [illegible]: On page 11 I show the result to be 8.1 %.

[illegible]

[illegible]

Mr. [illegible]: [illegible]

Mr. [illegible]: [illegible] to the risks in the industry that are [illegible].

[illegible]

MR. KELLOCK: No. Then, my lord, I come to the question of price stabilization, and risk. My friend has referred to these efforts to stabilize prices.

"In this connection I am submitting that the manufacture of full-fashioned hosiery is of recent growth and that the financial risk is great, and requires a substantial return because of, among others, three principal factors: (a) the machinery, (b) the raw material, (c) the export market."

In the case of machinery:

"The machinery used in producing full fashioned hosiery is of comparatively recent invention, and the process of invention and radical improvements is not over. This machinery knits 18 to 20 ~~leeg~~ legs on one machine and from 20 to 24 feet on another machine. Owing to the size of these machines, and the high mechanical precision necessary in producing stockings from silk in order to prevent producing a disastrous number of seconds, the machinery is expensive. In the last ten years the improvement has been from 39 gauge machines, to 42 gauge machines, and there are now 57 gauge machines in Canada, with the possibility shortly that 60 gauge machines will be required. Also invention has not ceased and there is a possibility that in the not distant future that a mchine will be perfected that will combine

Mr. [illegible] Then, my lord, I come to the question of price stabilization, and plan. My friend has referred to these efforts to stabilize prices.

"In this connection I am submitting that the manufacture of full-fashioned hosiery is of recent growth and that the financial risk is great, and requires a substantial return because of, among others, these principal factors:

(1) the machinery, (2) the raw material, (3) the export market."

In the case of machinery:

"The machinery used in producing full fashioned hosiery is of comparatively recent invention, and the process of invention and continual improvements is not over. This machinery varies in to 44 legs on one machine and from 60 to 84 feet on another machine.

Owing to the size of these machines, the use high mechanical precision necessary in producing stockings from silk in order to prevent producing imperfections number of seconds, the machinery is expensive. In the last ten years the improvement been from 42 gauge machines, to 45 gauge machines, and these are now 57 gauge machines in Canada.

[illegible] silk or production. The investing any [illegible] there is a possibility that in the [illegible] [illegible]

the operations of footing and legging in one operation, instead of these operations being done on two machines as at present, and this would result in causing the present machines to become obsolete."

In regard to raw material:

"The comparatively high price of the raw material used as compared to other textile fibres and the violence in the fluctuations in the prices of such raw material, which increases the risk of operating as mills have to buy raw material ahead. The raw material risks may be seen from Exhibit 1304,"....

That is a graph showing a very violent fluctuation in the price of raw silk:

"Which gives the movement in the price of raw silk (before degumming and throwing) in New York for 83% white 13/15, which is the class of silk used by the full fashioned hosiery manufacturers. The price movement was as follows:"

And this illustrates the risk in carrying on this business:

In 1931 in January was $3.40 per pound, declined to $2.60 per pound in May. Moved up to $2.95 per pound in September and moved down to $2.10 in December. The high was $3.40 and the low $2.10, a difference of $1.30 per pound.

[illegible] of footing and lasting is one [illegible]. [illegible] of [illegible] machines were done on two machines as at present, and this would result in causing the present machines to be [illegible].

In regard to raw material:

"The comparatively high price of the raw material used as compared to other textile fibres and the violence in the fluctuations in the prices of such raw material, which increases the risk of operating as mills have to buy raw material ahead. The raw material risks are seen from public loom,"....

The price of raw silk:

"Union gives the movements in the price of raw silk (before degumming and throwing) in New York for 006 weeks 1921, which is the stage of silk used by the full fashioned hosiery manufacturers. The price movement was as follows;" and this illustrates the risk in carrying on silk [illegible].

In 1921 in January was $6.40 per pound, declined to $4.00 per pound in May. Moved up to $4.[illegible] per [illegible] and [illegible] as $[illegible] in [illegible] the high was $[illegible] and low $[illegible], a difference of $[illegible] per pound.

In 1932 in January was $2.55 per pound. Declined to $1.25 a pound in May, Rose to $2.10 a pound in September and declined to $1.60 per pound in December. The high was $2.35 and the low $1.25. The difference was $1.10 per pound.

THE COMMISSIONER: You need not read them all. Well, you provide for that by always basing your prices on the current cost of raw silk, do not you?

MR. KELLOCK: That was the evidence in connection with some branches. I am not sure, my lord. I will assume it to apply to the full-fashioned hosiery. I do not see why it would not.

THE COMMISSIONER: That is, as the market for the raw material fluctuates your selling price of the finished product fluctuates too regardless of whether you paid more or less for the raw material. Is not that sufficient insurance?

MR. KELLOCK: Not necessarily. That is, if you have orders ahead on contracts then you may have to fill these orders at much higher prices of raw silk than the date you took them.

THE COMMISSIONER: Or you might be able to fill them at a much less price.

MR. KELLOCK: There is a chance.

THE COMMISSIONER: Raw silk is a market commodity, is not it? Has future quotations as well as raw cotton.

MR. KELLOCK: Yes.

In 1923 in January was $2.55 per pound. Declined to $1.25 a pound in May, rose to $4.10 a pound in September and declined to $1.65 per pound in December. The high was $4.35 and the low $1.25. The difference was $3.10 per pound.

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The COMMISSIONER: You need not read them all. Well, you provide for that by always basing your price on the current cost of raw silk, do not you?

Mr. FULLER: Just as the evidence in connection with some commodities. I am not sure, my lord. I will assume it to apply to the silk-consumed industry. I do not see why it would not.

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The COMMISSIONER: That is, as she was for the raw material fluctuates your selling price of the finished product fluctuates too regardless of whether you paid more or less for the raw material. Is not that sufficient insurance?

15

Mr. FULLER: Not necessarily. That is, if you have orders ahead on contracts then you may have to fill these orders at much higher prices of raw silk than the ones you took them.

20

The COMMISSIONER: Or you might be unable to fill them at a much less price.

Mr. FULLER: There is a chance.

25

The COMMISSIONER: Raw silk is a market commodity, is not it? The future quotations as well as the others.

30

Mr. FULLER: Yes.

THE COMMISSIONER: In all these products which are on the commodity market, facilities are right there for protecting yourself, insuring yourself.

MR. KELLOCK: I do not know whether there is a futures market in connection with raw silk.

THE COMMISSIONER: I would be surprised if there was not.

MR. KELLOCK: Mr. Rene says there is.

THE COMMISSIONER: That is the object of futures markets to allow people to protect themselves.

MR. KELLOCK: There is just the element that if I have contracts ahead and the price goes up then I have to fill the order at that price and unless I am protected in the way your lordship mentioned then there is that risk.

THE COMMISSIONER: I think you will find you are protected very well.

MR. KELLOCK: On the other hand if the price goes down the evidence was ---

THE COMMISSIONER: I know, that is all right for primitive trading but trading which is based on a commodity which has a futures market---

MR. KELLOCK: Your lordship may be right. I have not covered that.

Then, my lord, I come to the Export market."

"The export market for full fashioned hosiery has been expanding. The export from Canada is, as I have set out, increasing."

[illegible] In all these products which are on the commodity market, facilities are right there for protecting yourself, insuring yourself.

MR. KELLOGG: I do not know whether there is a future market in connection with rye silk.

THE COMMISSIONER: I would be surprised if there was not.

MR. KELLOGG: Mr. Hope says there is.

THE COMMISSIONER: There is one object of futures markets to allow people to protect themselves.

MR. KELLOGG: There is just the element that if a futures contracts stood and the price goes up then I have to fill the order at the price you makes I am protected in the way your lordship mentioned when there is that risk.

THE COMMISSIONER: I think you will find you are [illegible].

MR. KELLOGG: In the other hand if the price goes down the evidence was ---

THE COMMISSIONER: I know, that is all right for primitive trading but trading which is based on a commodity which has a future market---

MR. KELLOGG: [illegible] I have not [illegible].

Then, my lord, I come to the export market. "The export market for full fashioned hosiery has been stagnating. The export from Canada is, as I have not my information."

From 1932 to 1935 from 29,204 dozen pairs, having a value of $731,714 to 1935, 303,896 dozen pairs with a value of $1,965,902, and the average price per dozen has declined from $7.37 to $6.46.

"The production of full fashioned hosiery in Canada (with the exception of production of Belding-Corticelli Company Limited) is set out in the various reports of the Dominion Bureau of Statistics, as follows:"

This is full fashioned hosiery alone. In 1927, 302,164 dozen pairs to the value of $3,839,794. The average price per dozen was $12.70, and it goes up to 1930, 1,086,194 dozen pairs to the value of $10,865,109. It was done somewhat in1931 and up again in the next three years until it reaches 1,637,231 dozen pairs to the value of $9,307,952. As your lordship sees in the right-hand column there is written , "Average price per dozen," and the decline in that was from $12.70 in 1927 to $5.68 in 1934, and that decline continued all the way through from 1930 to 1934 and there is a fall there of almost 50% in the period.

MR. McRUER: Where did these figures "Average price per dozen" for the export market come from? Is that from trade of Canada?

MR. KELLOCK: Trade of Canada, it says so.

MR. McRUER: It is not from your own companies?

MR. KELLOCK: No.

MR. McRUER: This information would be available

From 1882 to 1885 from 32,204 dozen pairs, mark
a value of $271,714 to 1885, 303,896 dozen pairs
with a value of $1,565,906, and the average price
per dozen has declined from $7.67 to $6.46.

"The production of full fashioned hosiery
in Canada (with the exception of production of
Belding-Corticelli Company Limited) is set out
in the various reports of the Dominion Bureau
of Statistics, as follows:"

This is full fashioned hosiery alone. In 1887,
206,164 dozen pairs to the value of $3,020,724. The
average price per dozen was $12.76, and it goes up to
1890, 1,066,124 dozen pairs to the value of $14,966,14[illegible].
It was down somewhat in 1891 and up again in the next
three years until it reaches 1,627,321 dozen pairs
to the value of $8,817,966. As your lordship sees
in the right-hand column there is written, "average
price per dozen," and the decline in that was from
$12.76 in 1887 to $5.68 in 1894, and that decline
continued all the way through from 1890 to 1894 and
there is a lull there of almost 20% in the period.

Q. [illegible] "dozen" for the export market come from?

Is that from trade of commerce?

A. [illegible]: Trade of commerce, it says so.

Q. [illegible] [illegible]

A. [illegible] [illegible].

Q. [illegible] [illegible]

from the companies themselves who have reported and whose average price we have here.

MR. KELLOCK: Mr. Thompson gave evidence - I referred to it a day or two ago - of the continuous decline in the selling price from $3. a pair to 75 cents a pair.

MR. McRUER: I was wondering whether it was the same stockings which were exported and sold on the export market, the same type as sold on the Canadian market.

MR. KELLOCK: I cannot tell you that.

"It will be noted that in 1934 the export of full fashioned hosiery amounted to 15% of the Canadian production in dozens and 18% in value. It ~~will~~ will be noted that in 1935 exports increased by 40,781 dozen pairs, but the figures for Canadian productions are not available as yet. In the first 9 months of 1936 the exports of full fashioned hosiery (Trade of Canada) amounted to 318,615 dozen pairs valued at $2,013,778, which was greater in both dozens and value than the 12 months exports in 1935."

THE COMMISSIONER: Just pardon me a moment. You say that in the first nine months of 1936 the export of full fashioned hosiery amounted to 318,615 dozen pairs.

MR. KELLOCK: Yes.

THE COMMISSIONER: Well, look on your figures above.

MR. KELLOCK: 1,637,000.

THE COMMISSIONER: That is a falling-off.

from the wounded Canadian who were recovered and were treated [illegible] in the [illegible].

MR. [illegible]: Mr. Chairman have evidence - I refer to it a day or two ago - of the enormous decline in the selling price from [illegible] a pair to [illegible] cents a pair.

MR. [illegible]: I was wondering whether it was the stocking which we exported and not the boots and rubbers, the same type as sold on the Canadian market.

MR. [illegible]: I cannot tell you that.

"It will be noted that in 1918 the export of full fashioned hosiery amounted to 10% of the Canadian production in dozens and 8% in value.

It will be noted that in 1920 exports increased by 40,741 dozen pairs, but the figures for Canadian production are not available as yet. In the first 8 months of 1920 the exports of full fashioned hosiery (Trade of Canada) amounted to 214,815 dozen pairs valued at $2,[illegible], [illegible] union was greater in both dozens and value than in 12 months exports in 1920."

MR. [illegible]: Just [illegible] me a moment. You say that in the first nine months of 1920 the export of full fashioned hosiery amounted to 214,815 dozen pairs.

MR. [illegible]: Yes.

MR. [illegible]: Well, look on your figures above.

MR. [illegible]: 1,[illegible].

MR. [illegible]: That is a [illegible].

SECRETARY WHITELEY: No, that is the production. The export is up above.

THE COMMISSIONER: That would be, then, 303,896, dozen pairs in 1935.

MR. KELLOCK: It is more in the 9 months than in the total 12 months.

THE COMMISSIONER: I was looking at the wrong table.

MR. KELLOCK: Then I say:

"The export market risk is this: If the Canadian Mills were to lose the export market either through some other exporting country taking the market away from us, or through tariff action on the part of an importing country, there would be a considerable amount of full fashioned machinery thrown idle in Canada."

MR. McRUER: We want to keep our good relations then with these export countries?

MR. KELLOCK: I agree with that. I deal with these two companies which can be said to be perhaps the two most outstanding companies in this section of the industry.

THE COMMISSIONER: Silk products and Kayser?

MR. KELLOCK: Yes.

"It is true that there are full fashioned hosiery companies who have made and are making substantial profits on their hosiery namely the Canadian Silk

[illegible] Y INDUSTRY: No, that is the normal the export is up above.

THE CHAIRMAN: That would be, then, 1955, the down pairs in 1955.

MR. KELLOCK: It is more in the two months than in the total 12 months.

[illegible]: I was looking at the entire year.

MR. KELLOCK: Then I say:

"The export market risk is this: If the normal mills were to lose the export market either through some other exporting country taking the market away from us, or through tariff action on the part of an importing country, there would be a considerable amount of full fashioned machinery thrown idle in Canada.

[illegible]. MCGILL: We want to keep our good relations then with these export countries?

[illegible]. KELLOCK: I have this [illegible] I feel with [illegible] [illegible] the [illegible] in this analysis of the [illegible].

THE CHAIRMAN: Silk products and Tyvaray [illegible] Inc.

[illegible] firms that have [illegible] who have made and are making substantial profits on their business namely the Canadian silk

Products Co. Ltd. and the Julius Kayser Co. Limited. These were the first two companies to start in the business in Canada, they took the risk of installing an expensive new invention they were the pioneers and have established their brands and their lines throughout Canada, and old established branded lines bring a better price than new brands.",..

Mr. Thompson gave evidence specifically on that:

"....or unbranded merchandise, which either carries no brand at all or the brand of a ~~hw~~ wholesaler or retailer. It is in evidence that the Canadian Silk Products Co. Ltd. sell mostly branded lines, that is, with their own trademark, and they work to a quality basis, the witness Mr. Thompson said:

'We make more a quality product than most mills, we work on a quality basis. Our hosiery is ninety per cent style to-day. It is considered in the category of style, colour, sheerness of ~~fre~~ fabric and wearing qualities. We have established our line on a consumer acceptance basis to the point that we have a steady demand that takes probably 75 per cent of our production throughout the year. That is the quality on which we have been working and the standard we have set up allows us to get a better price than the average manufacturer of hosiery.'

Because the Canadian Silk Products was the first mill in Canada to exclusively manufacture

Products Co. Ltd. and the Italian Import Co. Limited. These were the first two companies to start in the business in Canada. They took the risk of introducing an expensive new invention they were the pioneers have established their trade and their lines [illegible] Canada, and old established trades lines being a better price than new comers."...

Witnesses gave evidence specifically on this:

"....or unknowledged manufacture, some firms carries a brand at all or the brand of a ** wholesaler or retailer. It is in evidence that the Can. Silk Products Co. Ltd. sell mostly branded lines, that is, their own trade mark, and they work [illegible]

"We make more a quality product than not mills, we work on a quality basis. Our machinery is kept up per cent ahead to-day. It is considered in the question of style, colour, measure of ** fabric and weight qualities. We have established our line on a consumer acceptance basis to the point that we have a steady demand that takes probably 75 per cent of our production throughout the year. That is the way in which we have been working and the standard we have set up allows us to get a better price than the average manufacturer of hosiery."

[illegible] the Can. Silk Products was the

full fashioned hosiery it has valuable brands and established outlets, and can sell at a higher price than the average manufacturer of hosiery, I submit that the operations of this mill cannot be used as a standard to measure the conditions in the industry as a whole. It is clear from the evidence that the only reason the Canadian Silk Products entered the price stabilization agreements was that their customers desired it and to generally assist the industry in a difficult period. It is submitted that what applies to the Canadian Silk Products also applies to the Julius Kayser Co. Ltd., who besides have to aid them in selling at good prices in Canada, not only the advertising they do in Canada, but also, to a considerable extent, the benefit of the advertising they do in the United States."

And I say:

"Now what was happening to other mills in the full fashioned hosiery industry.

It must be remembered that the lines in price stabilization memoranda covered only the sales and low end of the production of full fashioned hosiery of the mills in Canada, that is while they covered a large part of the production of some mills...."

MR. McRUER: What is meant by the "low end of production"- the least amount they produce?

[illegible]

Full fashioned hosiery -- the variable trade [illegible] established outlets, and can sell at a higher price than the average manufacturer of hosiery, I submit that the operations of this mill cannot be used as a standard to measure the conditions in the industry as a whole. It is clear from the evidence that the only reason the Dominion Silk Mills Co. entered the price stabilization [illegible] and to generally assist the industry in a difficult period. It is submitted that what applies to the Dominion Silk Products also applies to the Julius Kayser Co. Ltd., who besides have to aid them in selling at good prices in Canada, not only the advertising they do in Canada, but also to a considerable extent, the benefit of the advertising they do in the United States."

and I say:

"The effect was hopeless to other mills in the full fashioned hosiery industry.

It must be remembered that the lines in question [illegible] and low end of the production of full fashioned hosiery of the mills in Canada, that is while they covered a large part of the production of [illegible] mills...

[illegible]: What is meant by the "low end of production" [illegible]

MR. KELLOCK: No, the cheap end of the production. And the "sales end" means about the same.

"....that is while they covered a large part of the production of some mills they covered a smaller part of the production of others. For example, in the f.o.b. price list of the Canadian Silk Products, of May 26th, 1936, there are only two lines at $5.25 per dozen plus tax, four lines at $6 tax included, 12 lines at $7.50 tax included, two lines at $7.75 tax included, 3 lines at $9.50 tax included, two lines at $11.00, tax included, one line at $11.55, tax included, and two lines at $14.50, tax included. In the price memorandum of May 1st, 1935, at which time raw silk on the New York market was within 10 cents per pound of the price of May, 1936, it will be noted that only six lines produced by Canadian Silk Products fall within the price range in the memoranda and that 19 lines are above this price range."

So that so far as this Company was concerned, there was very few of those lines objected ---

MR. McRUER: It was one of the keenest objectors to price cutting.

MR. KELLOCK: "I submit, my lord, that I can show you from Exhibit 1155, the Commission Auditor's report, why the price stabilization agreements were entered into in 1932. In that Exhibit the Auditor sets out certain figures regarding

Mr. [illegible]: So, the going and of the production, and the "sales end" means about the same.

"...that is while they covered a large part of the production of some mills they covered a smaller part of the production of others. For example, in the f.o.b. price list of the Gordian Silk Products, of May 28th, 1926, there are only two lines at $5.25 per dozen plus tax, four lines at 5% tax included, 12 lines at $7.50 tax included, two lines at $7.75 tax included, 3 lines at $8.50 tax included, two lines at $11.00, tax included, one line at $11.25, tax included, and two lines at $16.50, tax included. In the price schedule of May 1st, 1925, at which time raw silk on the New York market was within 10 cents per pound of the price of May, 1926, it will be noted that only six lines produced by Gordian Silk Products fell within the price range in the schedule mentioned; and 19 lines are above this price range."

So that so far as this company was concerned, there was very few of those lines objected ---

Mr. McKEE: It was one of the keenest objectors to price cutting.

Mr. [illegible]: I assume, we hope, that [illegible] was free from [illegible] lists, the [illegible] [illegible], by the price [illegible] [illegible] were entered into in 1926. In this [illegible] the [illegible] was not varied [illegible] according

25 hosiery mills. 12 of these mills produce full fashioned hosiery. I propose to take eight of these mills as a sample, leaving out Toronto hosiery and "Circle Bar," as their production is namely circular knit hosiery, and the Canadian Silk Products and Kayser Company Limited, for reasons already given. I am taking the figures for 8 mills: Allen "A", Gotham, Holeproof, National, Nordic, St. John's, Supersilk and Veldrest. Five of these mills produce only full fashioned hosiery and for three the bulk of their production in 1934 is full fashioned hosiery: National 90%, Allen "A" 57%, ---"

MR. McRUER: Where do these prices come from ?

MR. KELLOCK: By inquiry, in the next sentence by Mr. Whiteley.

"....Allen "A" 57% and Holeproof 66% (Ascertained by inquiry from the Royal Commission Secretary.) These eight mills had a production of $4,314,892. in 1934, of which I calculate full-fashioned hosiery amounted to approximately $3,867,470. The total production of full fashioned hosiery in Canada in 1934 (with the exception of the production of Belding-Corticelli Limited, was valued at $9,307,952, so that the sample I am submitting comprises about 40% of the industry. I would like to include more mills from the Auditors' list, or mills producing full fashioned hosiery which

[illegible] knitting mills. If of these mills produce full fashioned hosiery. I propose to take eight of these mills as a sample, leaving out Toronto hosiery and "Circle Bar," as their production is merely circular knit hosiery, and the Canadian Silk Products and Kayser Company Limited, for reasons already given. I am taking the figures [illegible] Class "A", [illegible], [illegible], [illegible], [illegible], [illegible], [illegible]. Five of these mills produce only full fashioned hosiery and for these the bulk of their production in 1934 is full fashioned hosiery: National 90%, Allen "A" 87%, ---"

MR. MOUNT: Where do these prices come from?

MR. KELLOCK: By inquiry, in the same sentence by Mr. Whitely.

"....Allen "A" 87% and Holeproof 98% (reconstituted by inquiry from the Royal Commission report.) These eight mills had a production of $4,314,302. in 1934, of which I calculate full-fashioned hosiery amounted to approximately $3,387,470. The total production of full fashioned hosiery in Canada in 1934 (with the exception of the production of Reading-Cortiselli Limited, was valued at $4,247,429, so that the mills I am [illegible] [illegible] about 40% of the industry. I would like to [illegible] some mills from the [illegible] list, or mills producing full fashioned hosiery which

are not in this list, but the difficulty is that they produce other goods as well as full fashioned hosiery. However, it is submitted that the figures for this group of 8 mills are sufficient to illustrate my contention that there were mills in the industry that were in difficult times, and that the attempts at stabilization of prices did not result in undue profits being made.

Unfortunately the auditor's report does not allow a full analysis of the business of these 8 mills to be reviewed, in that he does not give figures that enable all bond interest or income tax and capital employed to be segreggated. On page 3 of Exhibit 1155 he gives the sales of these 8 mills as follows:"

And I set them out here, showing a total of $20,507,119 for the fiveyeare period 1931 to 1935.

"On page five of Exhibit 1155 he shows that the revenue for these 8 mills before bond interest, income tax or preferred dividends was:"

And I set them out here, the total being $461,629.

"The result of these five years' operations in making and selling $20,507,119 worth of hosiery was that thesemills obtained 2.2 ¢ for every dollar's worth of goods sold, out of which had to be taken bond interest, income tax and preferred dividends.

are not in this list, but the difficulty is that they produce other goods as well as full fashioned hosiery. However, it is submitted that the figures for this group of 8 mills are sufficient to illustrate my contention that there were mills in the industry that were in difficult times, and that the attempts at establishment of prices did not result in undue profits being made.

Unfortunately the auditor's report does not allow a full analysis of the business of these 8 mills to be reviewed, in that he does not give figures that enable all bond interest or income tax are applied employed to be segregated. On page 2 of Exhibit 1155 he gives the sales of these 8 mills as follows:"

and I set them out here, showing a total of $20,307,119 for the five-year period 1931 to 1935.

"On page five of Exhibit 1155 he shows that the revenue for these 8 mills before bond interest income tax or profits dividends was:"

and I set them out here, the total being $441,550.

"The result of these five years' operations in making and selling $20,307,119 worth of hosiery was that these mills obtained 2.2 ¢ for every dollar's worth of goods sold, out of which had to be taken bond interest, income tax and profits dividends.

"In the Commission Auditor's Table, page 5, Exhibit 1155, the following position is revealed in regard to these 8 full fashioned hosiery firms

Allen "A" Company made a loss in 1931 of $34,897.05, a loss of $77,184.23 in 1932, of $42,371.36 in 1933, and $30,757.23 in 1934, and onlysucceeded in making a profit of $726.30 on the sale of $360,632.39 worth of full fashioned hosiery in 1935.

The Gotham Hosiery Company, in 1931 this Company had a revenue of $50,622.32 before bond interest and income tax, in 1932 this revenue decreased to $5,499.73, before bond interest and income tax, and in 1933 made a loss of $4,953.84 on a sale of full fashioned hosiery amounting in value to $334,387.25.

The Holeproof Hosiery Company - this company made a loss of $59,088.45 in 1931, turned this into a gain of $13,007.82 before bond interest and income tax in 1932 on the sale of $709,714.67 worth of hosiery, and in 1933 had a revenue of $1,126.39 before bond interest and income tax on the sale of $635,272.79 worth of hosiery."

MR. McRUER: Are these companies exclusively full fashioned hosiery companies?

MR. KELLOCK: I have already set that out.

MR. McRUER: Are they? The point is if they are not exclusively full fashioned hosiery companies,

they may have made profits on the full fashioned hosiery and---

MR. KELLOCK: All I say is, the onus is on my friend and he has not shown anything, and I am in this way showing the experience of these companies insofar as that can be done on the basis of the evidence before your lordship.

Take the National Hosiery Mills ---

MR. McRUER: The two leading full fashioned hosiery companies that were in the agreement made very large profits.

MR. KELLOCK: The National Hosiery Mills in 1931 made a loss of $13,962 on a sale of $637,410 worth of hosiery. In 1932 they made a loss of $1,088 on a sale of $553,108 worth of hosiery.

THE COMMISSIONER: You are using the word "hosiery" right through. I am assuming you are at least segregating their hosiery business from anything else they may have had. You say they made a loss on a sale of $637,000 worth of hosiery?

MR. KELLOCK: That is right.

THE COMMISSIONER: If they are doing that, you segregate the hosiery business entirely apparently so as to appropriate the sales and the losses entirely to hosiery.

MR. KELLOCK: Well, Mr. Berry tells me that we need have no worry, that they only make hosiery.

THE COMMISSIONER: That is, this particular company?

MR. McRUER: Do they make the full fashioned hosiery of the type that is in the agreement, because they may have made a very big profit on the type agreed upon and on the other lines making losses.

MR. KELLOCK: What I say about it is on page 15. I am taking the figures for 8 mills, 5 of these mills produce only full fashioned hosiery and for the other three, the bulk of their production in 1934 is full fashioned hosiery. The National Company is 90%, the Allen A, is 57% and the Holeproof 66%.

THE COMMISSIONER: That accounts for the whole 8?

MR. KELLOCK: Yes.

THE COMMISSIONER: 5 produced nothing else and 3 over 57%. What did you say about these 3 again?

MR. KELLOCK: "For 3 the bulk of their production in 1934 is full fashioned hosiery: National, 90%, Allen "A", 57%, and Holeproof 66%."

Now, you take the Nordic Hosiery Company, page 17. I set out the sales for 1930 to 1935 which total $1,608,336, and also the revenue for the same years, which is before bond interest or income tax, amounting to only $50,640, and that is 3.1¢ on every dollar's worth of hosiery sold and out of this had to pay income tax.

The St. John's Silk Company---

THE COMMISSIONER: You did not say anything about bond interest - perhaps they had none.

of the type that is in the agreement, because they may have made a very big profit on the type agreed upon and on the other lines making losses.

MR. KELLY: Just I say above it is on page 18. I am taking the figures for 8 mills, 5 of those mills produce only full fashioned hosiery and for the other three, the bulk of their production in 1934 is full fashioned hosiery. The National Company is 90% the Allen A, is 97% and the Holeproof 66%.

THE CHAIRMAN: That accounts for the whole 8

MR. KELLY: Yes.

THE CHAIRMAN: 5 produce nothing else and 3 over 97%. What did you say about these 4 again?

MR. KELLY: For 3 the bulk of their production in 1934 is full fashioned hosiery: National, 90%, Allen "A", 97%, and Holeproof 66%."

Now, you take the Morris Hosiery Company, page 17. I put out the sales for 1930 to 1935 which total $1,608,386, and also the revenue for the same years, which is before bond interest or income tax, amounting to [illegible], but that is [illegible] [illegible] [illegible] [illegible] in the future [illegible].

The Mr. Morris Mills Company---

THE CHAIRMAN: The Mills do not manufacture hosiery - primary they [illegible].

MR. KELLOCK: I think that is the reason. I don't think bond interest should be mentioned in the top of the right hand column.

The St. John's Silk Company, their sales for 1930 to 1935 amounted to $1,670,717 and their revenue, again before income tax ---

THE COMMISSIONER: Bond interest comes out again.

MR. KELLOCK: Yes, my lord. Their revenue, again before income tax, amounted to $95,963, that is this company made 5.7 ¢ on every dollar's worth of hosiery they sold and out of it would have to pay income tax.

MR. McRUER: Have you St. John's Textile in as one of those that exclusively manufactured full fashioned hosiery?

MR. KELLOCK: Yes, I am told 100%.

MR. McRUER: I understand they manufacture fabric?

MR. KELLOCK: It is the St. John's Silk Company. That is a mistake.

Then I come to Supersilk Hosiery Company. This Company did not earn its preferred stock dividends in 1932, 1933, 1934 and 1935. The sales of this Company in this four-year period amounted to $2,345,204.

I have already analysed the Redrest Hosiery Company, which did not succeed in earning its preferred dividend in 1931 and 1932. In 1933 it had a return on the common stock equity of $1,555.12 on the sale of $782,742.19 worth of full fashioned hosiery, and in

Mr. Sullivan: I think that is the reason. I don't think bond interest should be included in the [illegible] and [illegible].

The St. John's Milk Company, both sales for 1935 to 1938 amounted to $1,076,417 and their average before income tax ---

[illegible]

Mr. Ashford: Yes, my lord. Their revenue, before income tax, amounted to [illegible], that is this company made 5.7 % on every dollar's worth of business they sold and out of it some have to pay income tax.

Mr. Ashford: Have you Mr. John's results in the [illegible] of those that exclusively manufactured full fashioned [illegible]

Mr. Ashford: Yes, I am sold [illegible].

Mr. Lewis: I understand they manufacture [illegible]

Mr. Ashford: It is the St. John's Milk Company, that is a [illegible].

Then I come to Superfluk Hosiery Company. This company did not earn its preferred stock dividends in 1932, 1933, 1934 and 1935. The sums of [illegible]

I have already analyzed the Goldness Hosiery Company, which did not succeed in earning its preferred dividend [illegible]. In 1938 it had a surplus of the common stock equity of $1,305.15 on the sale of $[illegible] [illegible] and in

1934 had a return of $9,355 on common stock equity on the sales amounting to $890,803.

THE COMMISSIONER: Very well, we will adjourn until tomorrow morning.

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-- The Commission adjourned at 5.07 P.M. to resume Tuesday, March 2nd, 1937, at 10.30 A.M.

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ROYAL COMMISSION ON THE TEXTILE INDUSTRY

HON. MR. JUSTICE W.F.A. TURGEON,

Commissioner,

A.S. Whiteley, Secretary,

ONE HUNDRED AND TWENTY-FIRST DAY

(March 2nd, 1937)

A R G U M E N T

Robert Brydie,
Official Reporter.

ROYAL COMMISSION ON THE TEXTILE INDUSTRY

HON. MR. JUSTICE W.F.A. TURGEON,

Commissioner,

A.S. Whiteley, Secretary,

Appearances:

J.C. McRuer, K.C. and E. Beauregard, K.C.	Commission Counsel,
R.L. Kellock, K.C.	For Primary Textile Institute.
C.G. Heward, K.C. Aime Geoffrion, K.C. and C.T. Ballantyne,	For Dominion Textile Company.
S.G. Dixon, K.C.	For Courtaulds Limited,
L.A. Forsyth, K.C.	For Canadian Celanese Ltd. and Canadian Silk Products Limited.
A.S. Bruneau, K.C.	For Canadian Cottons,
Thos. Tremblay, K.C. and J. H. Hebert,	For M.E. Binz Co. Ltd.
Francois Lajoie, K.C.	For Wabasso Cotton Co.

--- oOo ---

A P P E A R A N C E S:

J.C. Walker, K.C. and E. Bourgoin, K.C.	Consolidation Counsel.
R.L. Kellock, K.C.	For Priority Bondholders.
[illegible] and	For [illegible] Company.
[illegible] K.C.	For Curbrooke Limited.
[illegible]	[illegible] Company.
[illegible]	For [illegible]
[illegible] Tresdale, K.C. and [illegible]	For [illegible] Co. Ltd.
[illegible]	[illegible] Co.

--- 4/4 ---

Ottawa, Ontario.
Tuesday, March 2, 1937.

-- The Commission resumed at 10.30 a.m.

ARGUMENT BY Mr. KELLOCK, K.C. (Resumed):

I was referring Your Lordship to page 18 of my small brief, paragraph 17, in which I make certain submissions.

"It is submitted that the figures of these eight mills show that the full-fashioned hosiery industry was in a serious condition in the period 1931 to 1935, and throughout this period no undue profits were made by this sample of eight mills which represents forty per cent of the full-fashioned hosiery production in Canada.

It is submitted that the returns from operating these eight mills were such that they were actually operated for the benefit of their employees rather than for the benefit of the shareholders.

It is submitted that the analysis of the operations of these eight mills shows that the prices set out in the hosiery memoranda were not at a profitable level.

If the work of stabilization had the effect of keeping these mills in business, one in Hanover one in St. Hyacinthe, two in London, one in Hamilton, one in Montreal, one in St. Johns, Que.,

"It is submitted that the figures of these eight mills show that the full-fashioned hosiery industry was in a serious condition in the period 1931 to 1933, and throughout this period no undue profits were made by this sample of eight mills which represents forty per cent of the full-fashioned hosiery production in Canada.

It is submitted that the returns from operating these eight mills were such that they were actually operated for the benefit of their employees rather than for the benefit of the [illegible].

It is submitted that the analysis of the operations of these eight mills shows that the prices set out in the hosiery memoranda were not at a profitable level.

If the work of stabilization had [illegible] of [illegible] these mills is [illegible], one is [illegible] one in St. Jerome, two in London, one in [illegible], one in [illegible], and in [illegible].

"and one in Toronto, in the first place it was for the benefit of the employees, in the second place for the benefit of the communities in which they were located, and in the third place the return to capital was negligible."

The COMMISSIONER: What do you mean by the work of stabilization ?

Mr. KELLOCK: The setting of these minimum prices at certain levels.

The COMMISSIONER: You are referring to stabilization of prices ?

Mr. KELLOCK: Yes, My Lord.

"What would have happened if these eight companies had reduced their selling price one cent per pair ? In 1932 these companies produced 466,522 dozen pairs of full-fashioned hosiery (Exhibit 611) and their revenue before bond interest and income tax was $29,150.79."

The COMMISSIONER: Their revenue ?

Mr. KELLOCK: Yes, revenue before bond interest and income tax.

The COMMISSIONER: You do not mean their profits ?

Mr. KELLOCK: No; I do not mean their net profits and that is why I do not use that word.

The COMMISSIONER: Do you mean to say that these eight companies had a total revenue in 1932 of only $29,000 ?

Mr. KELLOCK: Yes, My Lord. I do not mean that that was the value of their sales; I mean that was

"and one in Toronto, in the first place it was for the benefit of the employees, in the second place for the benefit of the communities in which they were located, and in the third place the return to capital was negligible.

The COMMISSIONER: What do you mean by the work of stabilization ?

Mr. KELLOCK: The setting of these at lower prices at certain levels.

The COMMISSIONER: You are referring to stabilization of prices

Mr. KELLOCK: Yes, My Lord.

"What would have happened if these eight companies had reduced their selling price one cent per qt.? ... Those companies produced 4ab.3ab ounces being of full-refined bullion (antimony alt) and their revenue before bona interest and income tax was $29,1ab.70."

The COMMISSIONER: Their revenue ?

Mr. KELLOCK: Yes, revenue before bona interest and income tax.

The COMMISSIONER: You do not mean their profits

Mr. KELLOCK: No; I do not mean their net profit and that is why I do not use that word.

The COMMISSIONER: Do you mean to say that these eight companies had a total revenue in 1ab2 of only $29,000 ?

Mr. KELLOCK: Yes, my Lord. I do not know but that may be false as I say below; I mean that was

the value of their sales less expenses, down to the point immediately before you deduct bond interest and income tax. But even that figure does not represent their net profit.

The COMMISSIONER: What would you mean by gross profit ? Is this not the same thing ?

Mr. KELLOCK: Yes, it is really the same thing.

"If they had reduced their prices by one cent per pair, or twelve cents per dozen, they would combined have shown a loss of $26,833.45. In 1933 these same companies produced 523,210 dozen pairs (Exhibit 611) of full-fashioned hosiery and their revenue before bond interest and income tax was $64,624.28. If they had reduced their price one cent per pair they would have had a revenue of only $1,839.08 before income tax. It is submitted that this shows that the prices set out in the full-fashioned hosiery memoranda were not at a profitable level.

If the price of the full-fashioned hosiery had been reduced by the mills one cent per pair, or twelve cents per dozen, there is no evidence that this reduction would have been passed on to the public. Full-fashioned hosiery is sold by the mills to the retailers, and the retailers put on a mark-up before selling to the consumer. In the Price Spreads and Mass Buying Report, Proceedings and Evidence, Volume 3, page 2899, on the only example of full-fashioned hosiery that

[illegible] Mr. [illegible] Mr. [illegible] Mr. [

"can be found, it is shown that a pair of full-fashioned silk hose in 1934 which the mill invoiced at 67 cents per pair, and which cost the distributor 74 cents laid down, was sold for $1.19 per pair, that is, the initial mark-up for the distributor was 60.81 per cent of the cost to the distributor. In view of this, it is a reasonable assumption that if the mills had reduced their prices one cent per pair, this reduction, while being completely disastrous to them, would not necessarily have been passed on to the public. I submit, My Lord, that the attempted stabilization of full-fashioned hosiery prices was not a question of the mills obtaining higher prices and the consuming public having to pay more, but was rather in the nature of preventing those retailers who were prepared to make misleading statements as to quotations from forcing down the mill prices to them, so that they could obtain a greater mark-up while selling to the public at the same price as before.

It is submitted that if the full-fashioned hosiery results could be extracted from the records of the Mercury Mills Limited, Monarch Knitting Company, Penmans Limited, and L. O. Hudson and Company, the picture would be the same as for the eight mills already analyzed. An examination of Exhibit 1082 shows that Mercury was in the red on their entire production from 1930 to 1931

"can be found, it is shown that a pair of full-fashioned silk hose in 1934 which the mill invoiced at 97 cents per pair, and which cost the distributor 74 cents laid down, was sold for $1.19 per pair, that is, the initial mark-up for the distributor was 60.81 per cent of the cost to the distributor. In view of this, it is a reasonable assumption that if the mills had reduced their prices one cent per pair, this reduction, while being completely disastrous to them, would not necessarily have been passed on to the public. I submit, by inf, that the attempted stabilization of full-fashioned hosiery prices was not a question of the mills obtaining higher prices and the consuming public having to pay more, but was rather in the nature of preventing those retailers who were prepared to make misleading statements as to quotations from forcing down the mill prices to them, so that they could obtain a greater mark-up while selling to the public at the same prices as before.

It is submitted that if the full-fashioned hosiery results could be extracted from the records of the Security Mills Limited, Monarch Knitting Company, Kenmore Limited, and J. G. Hanson and Company, the figures would be the same as the figures which already exist. In consideration of Security Mills Limited hosiery was in existence as Stuart Knitting Company Limited in 1931

"inclusive, that L. O. Hudson was in the red from 1931 to 1935 inclusive, and that the Monarch Knitting Company was in the red in 1930 and only made a profit before bond interest and income tax of $17,511.31 on sales amounting to $396,053.12 in 1932 and $12,164.53 before bond interest and income tax on sales of $496,277.17 in 1933."

The COMMISSIONER: You say here that Mercury was in the red on their entire production from 1930 to 1931 inclusive. Is that 1931 figure correct ? There must be a mistake there.

Mr. KELLOCK: It should be 1935.

Mr. McRUER: You say they were in the red on their entire production. That does not necessarily mean on the full-fashioned hosiery.

Mr. KELLOCK: Their entire production; that is the statement I make.

Mr. McRUER: We heard what you said, but it does not mean necessarily in connection with the hosiery that they were in the red. They may have been making a profit onhosiery and losing on something else.

Mr. KELLOCK: The figures for the Mercury Company should be from 1930 to 1935 inclusive. Your Lordship will recall that that company is now entirely out of business.

"It might be noted that the Circle Bar Knitting Company on their total operations in 1931 made a profit before bond interest and income tax of only $16,793.64 on sales of $711,963.77, while

"in 1932 the loss was $819.70 on sales of $643.904.70."

Your Lordship will recall that in connection with the two companies that were most successful in this line of business, Canadian Silk Products and the Kayser Company, in addition to being first in the field and having well-established trademarks, Canadian Silk Products does an export business of about 15 per cent, while the Kayser Company has an export business of upwards of 30 per cent.

There is one thing to which I should like to call Your Lordship's attention. It arose yesterday in connection with my submission that there was a risk in the carrying on of this business by reason of the wide fluctuations in raw materials, and Your Lordship said that there was, of course, a futures market. But may I call attention to the exhibit to which I have referred from time to time for other purposes, Exhibit 932--the report on conditions and problems of the cotton textile industry of the United States, made by a special committee appointed by the president and submitted to him on July 29, 1935. On pages 70 and 71 they make this statement:

"The possibility of profit or loss through cotton fluctuations--"

And this applies to any raw material.

"--frequently becomes more important than technical efficiency, placing a premium on shrewd cotton buying rather than on efficiencyin operation.

"In 1932 the loss was $[illegible],70 on sales of $[illegible].00."

Your Lordship will recall that in connection with the two companies that were most successful in this line of business, Canadian Silk Products and the Keyser Company, in addition to being first in the field and having well-established trademarks, Canadian Silk Products does an export business of about 15 per cent, while the Keyser Company has an export business of upwards of 50 per cent.

There is one thing to which I should like to call your Lordship's attention. It arose yesterday in connection with my examination that there was a risk in the carrying on of this business by reason of the wide fluctuations in raw materials, and Your Lordship said that there was, of course, a future market. Now may I call attention to the exhibit to which I have referred from time to time for other purposes, exhibit 382--the report on conditions and problems of the cotton textile industry of the United States, made by a [illegible] appointed by the President, [illegible] mitted to him on May 29, 1933. On pages 70 and 71 they make this statement:

"The possibility of profit or loss through [illegible]

[illegible]

[illegible]

[illegible]

"Hedging offers protection against this risk, but it is far from perfect."

The COMMISSIONER: Hedging is not total insurance. They are covered in two ways, first by the existence of the hedging practice, and secondly by the way in which prices are fixed having regard to the prices of raw materials at the time you sell. I know that even those two together are not complete. You cannot expect absolute insurance, but they mitigate the danger.

Mr. KELLOCK: In connection with raw silk, the differential between the grade actually used by these companies and the grade that is quoted--that is, the standard grade on the future market--fluctuates widely; that is to say, the spread between the two, and there is this other factor to be taken into consideration, namely, that the business is done on that market on a seller's option basis, so that if a futures ~~market~~ contract is completed the seller has the option of delivering any grade of raw silk he likes, whether it is suitable or not.

The COMMISSIONER: And the buyer has to take it at a different price.

Mr. KELLOCK: Yes, and it may be quite unsuitable to him. Those are the facts in connection with the full-fashioned hosiery, in addition to the facts which I have set out in my main factum and to which I have directed attention. I have also attached some tables in support of the contention to which I have already called Your Lordship's attention.

The COMMISSIONER: With regard to what you have just said about carrying on through these years without any profit, you do not suggest that you would have been better off if you had closed down ?

Mr. KELLOCK: No, My Lord, I cannot say that and I do not attempt to say that. I do say, however, that my return was very small.

Mr. Mc RUER: What eight companies are selected here for your comments ?

Mr. KELLOCK: I have set them out.

Mr. McRUER: I know; but why pick these eight particular companies ?

Mr. KELLOCK: They are the only ones that I could segregate as far as full-fashioned hosiery is concerned. Five of them are one hundred per cent full-fashioned hosiery,and as regards the other three one is 94 per cent and the others 57 and 56 per cent respectively. These companies cover forty per cent of production and I am getting down as close as I can to strictly full-fashioned hosiery.

Mr. McRUER: And you leave out the two successful ones.

Mr. KELLOCK: I do not leave them out; I deal with them separately.

The COMMISSIONER: Which one fell so far below the one hundred per cent, the one you have given as 57 per cent ?

Mr. KELLOCK: The Allen "A" Company.

Mr. McRUER: The Allen "A" Company has red figures

[illegible]

The [illegible] to be found in some [illegible] and said about carrying on through three years without profit, you do not suggest that you would have been [illegible] if you had closed down?

Mr. Rankin: No, my lord, I cannot say that and I do not attempt to say that. I do say, however, that [illegible] have been small.

Mr. Mc Kim: Not eight companies are selected from the five companies?

Mr. Rankin: I have not them out.

Mr. [illegible]: I haven't had my list [illegible] [illegible]

Mr. [illegible]: Well, you [illegible] [illegible] aggregate so far as full-fashioned hosiery is concerned, five of them are one hundred per cent full-fashioned hosiery, and as regards the other three one is 84 per cent and the others 87 and 88 per cent respectively. [illegible] from 84% per cent to 100 per cent [illegible] or getting down as close as [illegible] can to strictly full-fashioned hosiery.

Mr. Rankin: And you leave out the two successful [illegible].

Mr. Rankin: I do not leave them out; I deal with them separately.

The commissioner: Which one fell so far below the [illegible] hundred per cent, the one you have given as 87 per cent?

Mr. Rankin: The firm of [illegible].

Mr. [illegible]: The [illegible] [illegible]

right across the board. I understand they brought in old machinery, wrote it up, and charged a depreciation on that.

Mr. KELLOCK: I am willing to be judged by the standard we have here.

Mr. McRUER: There is something funny about that.

Mr. KELLOCK: The Holeproof is 66 per cent; the others are one hundred per cent. That supplements the facts I have laid out in my main factum, and so far as the facts are concerned they negative any possible prejudice to anyone. The express evidence is that the price fixed went down continuously until the last one, which did not become effective and which was slightly up over the one preceding. With that exception the prices are all down, and they cover a few of the cheaper lines of production.

Now I come to the knit goods section.

"Production of knit goods and allied products is a substantial industry in Canada. The mills classed as knitting mills produce underwear of all types and kinds, knitted outerwear such as sweaters, cardigans and jackets, bathing suits, knitted fabrics, woven wool fabrics, woollen and worsted yarns for sale and hosiery both circular and full-fashioned. Some knitting mills spin the wool yarns they use, some throw the silk yarns they use, some spin cotton yarns for their own use, while other mills buy some or all of the yarns they use. It will therefore

right across the board. I understand they brought in the testimony, which is my, but around I have nothing to that.

Mr. KELLOGG: I am willing to be judged by the statement we have here.

Mr. Cordell: There is something funny about that.

Mr. FALLOON: The bleaproof is 66 per cent; the others are one hundred per cent. Just supplements the facts I have laid out in my main brief, and so far as the facts are concerned they negative any possible prejudice to anyone. The express evidence is that the price fixed went down continuously until the last one, which did not become effective and which was slightly up over the one preceding. With that exception the prices are all down, and they cover a few of the cheaper lines of production.

Now I come to the knit goods section.

"Production of knit goods and allied products is a substantial industry in Canada. The mills classed as knitting mills produce underwear of all types and kinds, knitted outerwear such as sweaters, outerwear for women, bathing suits, knitted fabrics, woven wool fabrics, woollen and worsted yarns for sale and hosiery both circular and full-fashioned. Some knitting mills spin the wool yarns they use, some throw the silk yarns that they use, some spin cotton yarns for their use, while other mills buy wool or silk or the yarns they use. It will therefore

"be appreciated that comparisons of financial returns and records, or attempts to tie in the production of knitting mills to any particular tariff item is not a simple matter.

The importance of the production of knit goods (exclusive of hosiery) may be seen from the production of the mills as given in the Dominion Bureau of Statistics reports on the Hosiery, knit goods and fabric glove industries in Canada in 1926 and 1934.

Summary of Knit Goods Production in 1926

(not including hosiery)

	Selling Value at Factory.
Underwear, combination	$ 6,643,857.
" separate	12,064,220.
Knitted Outerwear	10,014,222.
Other knitted products	2,081,723.
Total knit goods	$ 30,804,022.
Other products and customs work	1,504,727.
Yarns for sale	1,957,643.
Total	$ 34,266,392.

Summary of Knit Goods Production in 1934

(not including hosiery)

	Selling Value at Factory.
Underwear, combination	$ 5,230,881.
" separate	7,447,204.
Knitted outerwear	8,006,111.

We appreciated that comparisons of financial returns and records, or attempts to tie in the production of knitting mills to any particular tariff item is not a simple matter.

The importance of the production of knit goods (exclusive of hosiery) may be seen from the production of the mills as given in the Dominion Bureau of Statistics reports on the hosiery, knit goods and fabric glove industries in Canada in 1944 and 1945.

[illegible] Production in 1944

(not including hosiery)

	Selling Value at factory
Underwear, combination	$ [illegible]
separate	14,004,240.
Knitted Outerwear	[illegible]
Other knitted products	3,[illegible]
Total knit goods	$ 30,[illegible]
Other products and services work	[illegible]
Items for sale	[illegible]
	$ 34,266,222.

[illegible] Production in 1945

(not including hosiery)

	Selling Value at factory
[illegible]	[illegible]
[illegible]	7,147,204.
Knitted underwear	[illegible]

" Other knitted products	2,904,932.
Total knit goods	$ 23,589,128.
Other products and customs work	1,126,620.
Yarns for sale	1,482,958.
Total	$ 26,198,706.

IMPORTS OF KNIT GOODS

(not including hosiery)

Summary of Knit Goods Imports in Fiscal Year 1927

(which approximates to calendar year 1926)

From -	Great Britain	Other Countries	Total
Underwear	$ 357,594	$ 182,479	$ 540,073
Knitted outer-wear	490,929	441,475	932,404
Other knit goods	549,812	989,991	1,539,803.
	$ 1,398,335	$1,613,945	$3,012,280

(Trade of Canada)

Summary of Knit Goods Imports

Calendar Year 1934

From -	Great Britain	Other Countries	Total
Underwear	$ 210,763	$ 9,171	$ 219,934
Knitted outer-wear	547,560	135,056	682,616
Other knit goods	74,307	119,916	194,223
	$ 832,630	$ 264,143	$1,096,773

(Report on the Hosiery, Knitted Goods and Fabric Glove and Mitten Industries In Canada, 1934: Dominion Bureau of Statistics.)

EXPORTS OF KNIT GOODS

(not including hosiery)

Summary of Exports of Knit Goods in Fiscal Year 1927

(which approximates to calendar year 1926)

$.

To -	Great Britain	Other Countries	Total
Underwear	$ 68,747	$ 140,680	$209,427
Other knit goods	1,127	232,334	233,461
	$ 69,874	$ 373,014	$442,888

(Trade of Canada)

Summary of Exports of Knit Goods

Calendar Year 1934.

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To -	Great Britain	Other Countries	Total
Underwear	$ 35,176	$ 139,994	$175,170

(Report on the Hosiry Knitted Goods and Fabric Glove and Mitten Industries in Canada, 1934: Dominion Bureau of Statistics)

APPARENT MARKET KNIT GOODS

(not including hosiery)

	1926	1934
Canadian production	$ 30,804,022	$ 23,589,128
Imports	3,012,280	1,096,773
	$ 33,816,302	$ 24,685,901

Less exports	442,888	175,170
Apparent market	$ 33,373,414	$ 24,510,731

Next I come to the sample dealt with in the reporting companies.

" According to a list prepared at the request of commission counsel, and submitted to him, there are 131 establishments in Canada producing knit goods other than hosiery."

Mr. McRUER: What do you mean when you say that the list was prepared at my request ? We sent out a questionnaire and asked them all to answer it.

Mr. KELLOCK: I mean that you asked my clients, before you sent the questionnaire, for a list of the companies to whom you would send it, and this list of 131 was given.

"Commission counsel submitted to the commission auditor's report (Exhibit 1082), which purports to show the operations of 53 knitting mills for the years 1926 to 1935 inclusive. The total production of the 53 mills given was:

1926	$28,112,677.71
1934	$28,993,110.07

(Exhibit 1082, p. 4)

As already put forward from the Dominion Bureau of Statistics figures, the total production of the knitting industry in Canada was (exclusive of hosiery):

1926	$34,266,392.00
1934	$26,198,706.00

It would therefore appear to be clear that the operation returns of the 53 mills include a

"considerable value of hosiery and products other than knit goods. Five of the mills in this sample produced full-fashioned hosiery to the extent of 249,595 dozen pairs in 1934 (Exhibit 611), which is approximately 15 per cent of the total production of such hosiery in Canada (based on Dominion Bureau of Statistics figures). Fifteen of the mills in this sample produce other classes of hosiery. The financial reports of these mills therefore cover the production and sale of a considerable quantity of hosiery, full-fashioned or circular, profitable or unprofitable. If the hosiery operations were more profitable than the operations in knit goods, then the operation of knit goods was less profitable than the report indicates. On the other hand, if the hosiery operations were more unprofitable than the operations in knit goods, then the production of knit goods was more profitable than shown."

I come next to net profits to shareholders' equity.

"A summary of the results of ten years' operations, from 1926 to 1935, during which these mills sold $287,232,737.17 worth of goods, is as follows:

<u>Net Profit as a % of Shareholders' Equity</u>

1926	5.9 %
1927	7.1 %

"considerable value of hosiery and products other than knit goods. Five of the mills in this article produced full-fashioned hosiery to the extent of 935,889 dozen pairs in 1926 (Exhibit 61), which is approximately 15 per cent of the total production of such hosiery in Canada (based on Admission Bureau of Statistics figures).

Fifteen of the mills in this sample produce other classes of hosiery. The financial reports of these mills therefore cover the production and sale of a considerable quantity of hosiery, full-fashioned or circular, profitable or unprofitable. If the hosiery operations were more profitable than the operations in knit goods, then the operation of knit goods was less profitable than the report indicates. On the other hand, if the [illegible] the operations in knit goods, then the production of knit goods was more profitable than shown.

I come next to net profits to shareholders' equity.

"A summary of the results of ten years' operations, from 1916 to 1925, during which these mills sold $[illegible],[illegible],[illegible].17 worth of goods, is as follows:

Net Profit as a % of Shareholders' Equity

1920	[illegible]
1921	[illegible]

"

1928	5.8 %	
1929	2.8 %	
1930	1.2 %	Red
1931	1.8 %	Red
1932	0.9 %	Red
1933	2.3 %	
1934	2.5 %	
1935	2.9 %	

(Average for 10 years 2.5) "

The COMMISSIONER: That is on your usual basis, after paying interest ?

Mr. KEILOCK: Yes, these are net profits to the company.

"The average net profit on shareholders' equity was 4.0 per cent for the five year period 1926 to 1930, and 1.0 per cent for the five year period 1931 to 1935. It is submitted that this industry is not one where the return on capital invested makes it an attractive one for the investor. The return of one per cent on the shareholders' equity in the period 1931 to 1935 shows that this industry did not profit during the period 1931 to 1935 due to any changes in the tariff. It should also be noted that this sample undoubtedly includes the large and well-managed mills, and moreover does not include other mills which failed and went out of business during eht ten year period. The return of one per cent on the shareholders' equity, therefore

"represents the return of the most successful mills."

Instead of "represents" I should prefer to say "includes". Next I deal with the net profit in the sales--that is, how much in the dollar the companies really make for their efforts.

"The following table gives the sales of the 53 mills in the sample, the net profit (after bond interest and income tax), and the per cent of net profits on sales:

	Sales	Net Profit	%
1926	$ 28,112,677.71	$1,260,241.11	4.48
1927	29,028,624.72	1,543,749.73	5.32
1928	32,478,294.70	1,515,144.33	4.67
1929	31,698,703.84	736,582.03	2.32
1930	26,901,905.25	286,447.36 Red	10.65 Red
1931	28,260,207.52	449,858.77 Red	15.92 Red
1932	25,707,083.81	219,780.30 Red	8.55 Red
1933	26,279,855.72	584,644.80	2.22
1934	28,993,110.07	632,430.38	2.18
1935	29,772,273.83	706,558.88	2.37
TOTAL	$ 287,232,737.17 (a)	$6,023,264.83 (b)	2.10

(a) Exhibit 1082

(b) Factum, Section D (Statement 3, page 2)

It will be seen that for every dollar's worth of goods these mills sold they lost in 1930 10.65 cents, in 1931 15.92 cents and in 1932 8.55 cents. In 1933 these mills made

"representing the return of the most successful mills."

Instead of representing should prefer to say "losses". Next I deal with the net profit in the sales--that is, how much in the dollar the companies really make for their efforts.

The following table gives the sales of the 25 mills in [illegible], [illegible] (after bond interest and income tax), and the per cent of net profits on sales:

	Sales	Net profits	%
1924	[illegible]	[illegible]	[illegible]
1925	[illegible]	[illegible]	[illegible]
1926	92,424,874.70	1,315,144.25	1.87
1927	91,875,708.24	[illegible]	[illegible]
1928	80,901,809.85	[illegible]	[illegible]
1929	78,865,897.52	[illegible]	[illegible]
1930	83,707,185.41	[illegible]	8.85 loss
1931	86,277,185.72	594,444.10	2.88
1932	80,979,110.07	882,480.24	[illegible]
1933	89,772,272.85	707,124.38	2.27
[illegible]	88,[illegible],727.17 (a)	88,[illegible],284.75 (b)	[illegible]

(a) Twelve 10ths

(b) Factor, section 3 (statement 2, page 2)

It will be seen that for every dollar's worth of goods these mills sold they lost in 1930 10.05 cents, in 1931 15.92 cents and in 1932 8.85 cents. In 1933 these mills made

"2.2 cents on every dollar's worth of goods they sold, in 1934 they made 2.18 cents, and in 1935 2.37. It is submitted that there is no sign of undue profits here or taking advantage of any tariff changes during this period to earn undue profits."

I have translated these figures of net profits on sales into net profits to the shareholders themselves.

Mr. McRUER: Before you go any further, Mr. Kellock, I would refer you to page 5. The figure for sales in 1930 is $26,000,000 and you give the loss as $286,000, the percentage to which you were in the red being 10.65. That is not correct; $286,000 is not ten per cent of $26,000,000.

Mr. KELLOCK: There is a mistake there, My Lord, the decimal is in the wrong place.

The COMMISSIONER: It is only about one per cent, in other words we have to change the mourning.

Mr. KELLOCK: It is still in mourning, but not as deep.

The COMMISSIONER: The first red figure given should be 1.06.

Mr. McRUER: The next should be 1.5 and the next .85. It makes a difference in the calculations.

Mr. KELLOCK: I am obliged to my friend for pointing out the mistake. That will affect your average.

Mr. KELLOCK: I am wondering whether it does.

"2.2 cents on every dollar's worth of goods they sold, in 1924 they made 2.18 cents, and in 1925 2.27. It is submitted that there is no sign of undue profits here or taking advantage of any tariff changes during this period to earn undue profits.'

I have translated these figures of net profits on sales into net profits to the manufacturer [illegible] price.

Mr. [illegible]: Before you go any further, [illegible], I would refer you to page 6. The figure for sales in 1930 is [illegible], and you find the loss as $256,000, the percentage to sales [illegible] in the red being 10.6%. That is the [illegible] $256,000 is not ten per cent of $2,500,000.

Mr. [illegible]: There is a mistake [illegible] the bound in [illegible] yellow.

The [illegible]: It is only about one per [illegible] in other words we have to change the mourning.

Mr. [illegible]: It is still in mourning, but not [illegible].

The [illegible]: The first red figure given should be 1.08.

Mr. [illegible]: The next should be 1.5 and the next .88. It makes a difference in the calculation.

Mr. [illegible]: I am indebted to my friend for pointing out the mistake. That will affect your [illegible].

Mr. [illegible]: I am wondering whether it does.

I will have it checked.

Mr. McRUER: The red is not quite as bright as it was. The whole paragraph on page 6 is wrong.

Mr. KELLOCK: The same correction will have to be made for the three years.

The COMMISSIONER: In 1930, instead of saying they lost 10 per cent it should be 1.06.

Mr. KELLOCK: Yes, and in 1931 it would be 1.59 and in 1932 .85. But the average of 2.10 on the preceding page is correct, so that it is apparently an error in the copying. At any rate they were still unprofitable and that is the point. Next I deal with the Regent Knitting Mills, Limited:

> "In Exhibit 1070, page 9, submitted by the commission auditor, there is a statement set out which purports to show the net revenue applicable to common stock equity of the Regent Knitting Mills Limited. Here again, as in many other cases, the preferred dividend (noncumulative) was not paid for a period of years and this was not allowed for in the commission auditor's statement. The true statement of the return on common stock equity of this company is as follows."

In this paragraph there appears the same error we mentioned before.

The COMMISSIONER: What error do you refer to ?

Mr. KELLOCK: The error of omitting recognition of the fact that in years when the dividend on the preferred stock was not paid at all or was paid in part,

Mr. Kelly have it changed.

Mr. [illegible]: The end is not quite as bright as I was. The whole paragraph on page 6 is wrong.

Mr. Kelley: The same correction will have to be made for the three years.

The Commissioner: In 1969, instead of saving that 10 per cent it should be 1.05.

Mr. Kelley: Yes, and in [illegible] it would be 1.09 and in 1968 .05. But the average of 2.10 on the [illegible] page is correct, so that it is apparently an error in the copying. At any rate they were still [illegible] and that is the point. Just i feel [illegible]

"In April 1970, year 5, [illegible] by the commissioner auditor, there is a statement [illegible] which purports to show the net revenue applicable to common stock equity of the Agent Building [illegible] Limited. Here again, as in many other cases, the preferred dividend (noncumulative) was not paid for a period of years and this was not allowed for in the commission auditor's statement. The true statement of the return on common stock equity of this company is as follows."

In this paragraph then appears the same error as mentioned before.

[illegible]

the whole revenue was said to be a return of so much on the common stock, and I show the difference in the table.

	Commission Auditor's Exhibit 1070	Correct Statement
	%	%
1928	4.2	2.87
1929	5.2 Red	6.63 Red
1930	5.9 Red	7.46 Red
1931	9.0 Red	10.72 Red
1932	5.2 Red	7.24 Red
1933	1.3 Red	3.55 Red
1934	3.0	0.82
1935	0.8	1.34 Red

Again in this statement the commission auditor applies the term "net profit on operation" to figures before bond interest and interest on loans is deducted."

Coming to Stanfields Limited, the same situation applies there:

"Exhibit 1070, page 10, submitted by the commission auditor purports to show the percentage of net profits to shareholders' equity. He has ignored that in 1931 to 1933 the dividends on preferred stock were not paid (noncumulative). The figures as set out in Exhibit 1070 and the correct figures are as follows:

	Commission Auditor's Exhibit 1070	Correct Statement
	%	%
1931	2.3	0.73 Red

the whole revenue was said to be a return of an item on the common stock, and I show the difference in this way.

	Commission auditor's report 1970	Corrected statement
	$	$
1980	4.4	0.97
1981	4.4 Bad	1.03 Dec
1982	4.4 Bad	7.03 Dec
1983	5.4 Bad	14.17 Dec
1984	5.4 Bad	7.24 Dec
1985	1.5 Bad	5.15 Dec
1986	5.1	0.92
1987	0.4	1.4 Dec

Again in this statement the commission auditor applies the bank that profits on current so to figures before bank interest and returned on based in-advance.

Coming to Deferred Debtors, the same also from Profits Account.

"Profit 1979, page 19, entitled by the commission auditor purports to show the amount of net profits to shareholders' equity. In that amount was included the interest on the deferred debtors. The figures as set out in Profit 1970 and the corrected figures are as follows:

	Profit 1970	Corrected statement
	$	$
1981	2.5	0.75 Bad

1932	2.4	0.51 Red
1933	10.1	7.35

Again the term "net profit" is used in error in relation to sales."

The Monarch Knitting Company is in the same situation and I have dealt already with that in the main factum. As regards the Turnbull Company, in the report of this company the revenue from operations is described as net profit, whichit is not. If you apply the term to a particular company it is not a net profit at all. In connection with Penmans --- Limited, I have dealt with the figures in my main factum. A correct statement of the net profit to shareholders' equity for the period from 1926 to 1935 is given in statement 1, section D of my factum.

As regards the Moodie Company, the commission auditor's statement shows a line for "net profit on operations". It is submitted that there is no such thing as net profit on operations until bond interest and interest on bank loans are paid. The statement on page 2, Exhibit 1070, and the amount of bond and bank interest not deducted is as follows:

	Exhibit 1070 "Net Profit on Operations"	Bond and Bank Interest Not Deducted
1929	$ 2,835.81 Red	$ 53,395.91
1930	73,292.70 Red	56,629.79
1931	85,936.88 Red	51,249.90
1932	57,280.06 Red	51,644.98
1933	21,532.85	57,786.46

1926	[illegible]	[illegible]
1930	10.1	7.00

Again the term "net profit" [illegible] in relation to notes."

The "general auditing" country [illegible] attention and I have dealt without [illegible] with Burdick. As regards the Grandall Company, in the report of this company the revenue from [illegible] is described as net profit, which is not. If you apply the term to a particular company [illegible] net profit [illegible]. In [illegible] Limited, [illegible] main factor. [illegible] to shareholders' equity [illegible] 1930 is given in [illegible].

As regards the Doubie company, the commission auditor's statement shows a line for "net profit on operations". It is submitted that there is no such thing as net profit on operation until bond [illegible] and interest on bank loans are paid. The statement on page 2, Exhibit 1070, and the amount of bond and bank interest not deducted is as follows:

	Exhibit 1070 "net profit on operations"	Bond and bank interest not deducted
[illegible]	[illegible]	[illegible]
1930	[illegible]	[illegible]
1931	[illegible]	[illegible]
1932	[illegible]	[illegible]
1933	[illegible]	[illegible]

"1934	19,908.87	53,250.19
1935	26,710.27	49,985.74

It is quite apparent that the commission auditor's statement is in error to a very substantial figure."

Statements regarding price stabilization on women's and children's cotton underwear are contained in my factum, paragraph 18, page 11, section H.

In regard to the memorandum of August 16, 1935 (Exhibit 591), setting out prices for eight styles out of a large number of styles for women's and children's cotton underwear, the commission counsel asked for the names of the mills to whom this memorandum was sent. It was sent to nine mills, eight of which had their financial operations (incomplete, however) set out in commission auditor's exhibit 1082, pages 7 and 8.

Take the financial records of the following company, which show the net profits, including miscellaneous income, applicable to common stock equity:

J. R. Moodie & Co.

	Sales	Net Revenue	
1931	$ 981,348.90	$133,347.33	Red
1932	896,658.73	105,085.78	Red
1933	1,158,414.42	32,210.96	Red
1934	1,328,065.98	31,086.01	Red
1935	1,227,802.46	22,398.19	Red

(Table C)

(17260 follows)

Now, I submit that --

" This company can hardly be said to have gone into a combine to make undue profits, and succeeded in doing so. This mill in 1930 gave employment to 461 factory workers and had a mill pay roll of $318,642.13. In 1935 this mill took the risk of buying raw material, for producing and selling, to the amount of $1,227,802.46, was in the red to the extent of $22,398.19, and at the same time employed 445 factory workers.

S. Lennard & Sons:

The financial report on this company, shown for a four year period, is incomplete, in that it does not give sufficient information as to the net profits made by this company. However, the Exhibit shows that in the four years period 1932 to 1935 this mill sold $853,873.46 worth of goods, and had an operating revenue of $33,240.02, before bond interest and income tax; that is 3.8¢ on each dollar's worth of goods sold. Even taking the operating revenue as net profit, which it is not, there is no undue profit made.

MERCURY Mills Ltd:

The financial statement of this company, (Exhibit 1082) shows that in the five years period 1931 to 1935 inclusive, this mill took the risk during a period of depression of buying raw material for producing and selling $9,530,291.62 worth of goods, and made no profit

Now, I submit that --

" This company can hardly be said to have gone into a combine to make undue profits, and even in doing so. This mill in 1930 gave employment to 481 factory workers and had a mill net profit of $218,648.18. In 1932 this mill took the risk of buying raw material, for producing our selling, to the amount of $1,227,648.46, was in the red to the extent of $22,648.19, and at the same time employed 446 factory workers.

2. Income Tax

The financial report in this assembly, since for a four year period, is incomplete, in that it does not give sufficient information as to the net profit made by this company. However, the exhibit shows that in the four years ending 1932 to 1935 this mill sold $884,275.88 worth of goods, and had an operating revenue of $82,240.02, before bond interest and income tax that is 9.8¢ on each dollar's worth of goods sold. Even taking the operating revenue as net profit, which it is not, there is no undue profit made.

Excess Profits Tax:

The financial statement of this company, (Exhibit 1082) shows that in the five years ending 1931 to 1935 inclusive, notwithstanding the risk during a period of depression of buying the material for producing had selling $3,590,281.83 worth of goods, and made no profit

"in any of the five years.

C. Turnbull & Co.:

Here we have one of the companies that made some profit in the five year period 1931 to 1935. This company produced and sold $2,263,116.48 worth of goods in this five years period and had an operating revenue of $191,560.45. They paid out in income taxes on their operating revenue and miscellaneous income $63,245.34 in income tax. The result of the operations of this company can hardly be said to have resulted in excessive and unjust profit.

Penmans Limited:

This company made a profit on their stock equity as follows:

1931	2.7%
1932	3.5%
1933	5.2%
1934	5.1%
1935	5.4%

This company for this return on the net stock equity employed a substantial number of workers in their factories, 2,588 people in 1930 with a pay roll of $2,019,352.00 and 2,677 mill workers in 1935 with a mill pay roll of $1,976,185.00.

Zimmerknit Limited:

This company in the five years period 1931 to 1935"--

THE COMMISSIONER: That word, it is "five", is it?

MR. KEILOCK: Yes, my lord.

"-- produced $4,419,406.99 worth of goods and had

"In any of the five years.

4. Textile Co.:

This is also one of the companies that made some profit in the five year period 1921 to 1926. This company produced and sold $2,865,116.48 worth of goods in this five years period and had an operating revenue of $121,380.45. They paid out in income taxes or their operating revenue and miscellaneous income $66,246.34 in income tax. The result of the operations of this company can hardly be said to have resulted in excessive and unjust profit.

Summary:

This company made a profit on the ir stock equity as follows:

1921	8.7%
1922	3.6%
1923	4.3%
1924	4.0%
1925	5.4%

This company for this return on the net stock equity employed a substantial number of women in their factories, 2,388 people in 1920 with a pay roll of $2,019,382.00 and 2,377 mill workers in 1925 with a mill pay roll of $1,919,116.00.

Summary Tables:

Profit earned in the five years period 1921 to 1926:—

The Dominion Cotton Mfg. Co. "Textile", Ltd. 1,[illegible]

Ab. Shirts, Inc. or Lack.

"-- profit $1,[illegible],[illegible] were figures for the

"a revenue from operations of $295,450.62 before bond interest and income tax."

And I submit that --

"This does not indicate that there was any undue profit made by this company. It gave employment to factory workers as follows:

1931	301
1932	302
1933	258
1934	303
1935	288

and paid out in factory wages $1,037,920.80".

MR. McRUER: There is just one thing in reference to the Penman Company. You say that they employed 2,588 people in 1930 with a pay roll of $2,019,000 and 2,677 in 1935 with a pay roll of $1,976,000.

MR. KELLOCK: Yes.

MR. McRUER: That is about 100 more people.

MR. KELLOCK: For less money?

MR. McRUER: Yes; that is a correct conclusion.

MR. KELLOCK: That was completely analyzed in the evidence and is also analyzed in my factum where I deal with employment and wages. As I recall the evidence roughly the evidence was that the Penman Company had not reduced its rates of wages at all with the exception of, I think, overseers and one or two classes which are specifically mentioned in the evidence and in my factum, and, in fact, they had increased their rates with regard to loopers and menders who were people who were getting old and were slowing up, and the rates were increased so as to enable those people to earn the same money, and the reason for

what my friend refers to was analyzed mill by mill, and, as I recall the evidence, it was due -- I may not be exhaustive in my recollection -- it was due to a change in the character of the product, that is, a coarser product being fabricated in these mills where this change took place. This change does not apply throughout, but it was due to a coarser product being fabricated in these mills which meant less labour.

MR. McRUER: But it is a correct conclusion, whether it meant less labour.

THE COMMISSIONER: Just a minute; when you say less labour, there is more labour. You mean less rates.

MR. KELLOCK: I mean this, my lord --

THE COMMISSIONER: There were more people working.

MR. KELLOCK: They may not work the same hours for one thing, and they were working on a cheaper class of product, coarser work that did not command the same rates as the finer product.

THE COMMISSIONER: Once more, when you give these figures of employment, 2,677, and so on, you include all those who worked regardless of whether they were full time or part time.

MR. KELLOCK: Yes, that is so, and the time element would have to be taken into consideration.

THE COMMISSIONER: While you employed more individuals in 1935 they may have worked less hours.

MR. KELLOCK: You cannot divide one into the other, the number of people into the amount of wages. The express evidence is quite the other way. Then,

end, as I recall the evidence, it was due -- I may be somewhat in my recollection -- it was due to a change in the character of the product, that is, a decline in the quality with improvements in these mills where this change took place. This change does not merely throughout, but it was due to a coarser product being fabricated in these mills which meant less labor.

MR. MARTIN: But it is a correct conclusion, whether it meant less labor.

THE CHAIRMAN: Just a minute; when you say less labor, there is more labor. You mean less hours.

MR. ARMOUR: I mean this, my lord --

THE CHAIRMAN: There were more people working.

MR. ARMOUR: They may not work the same hours for one thing, and they are working on a coarser grade of product, coarser work that did not command the same rates as the finer product.

THE CHAIRMAN: Thank you, Mr. Armour. These figures of employment, 5,677, and so on, you include all those who worked regardless of whether they were full time or part time.

MR. ARMOUR: Yes, that is so, and the time summer would have to be taken into consideration.

THE CHAIRMAN: Only you mentioned some variations in 1921 that you have been here.

MR. ARMOUR: The reason always was lack of labor, the number of people who we could get.

THE WITNESS: If what the chairman says.

at the top of page 10 I submit that --

"The price stabilization agreement these mills entered into was for the purpose of attempting to stabilize a few lines of highly competitive goods so as to sell them at not too great a loss.

It is quite true that the agreement in regard to a few lines of women's and children's cotton underwear is still in effect, but it is submitted that these cover highly competitive lines which are generally sold below cost, and that there is no undue enhancement of the price to the consumer".

THE COMMISSIONER: Why do you say "generally sold below cost"? Is that a permanent state of affairs?

MR. McRUER: There is no evidence of that.

THE COMMISSIONER: It is a rather unusual thing to be told that. Why are they being manufactured if they are being sold below cost?

MR. McRUER: We had better import those and save the mills the penalty.

MR. KELLOCK: I cannot say --

THE COMMISSIONER: Is it just to fill up your employment?

MR. KELLOCK: It does that. Unless you want to retire from the field entirely you have to meet the prices that are quoted.

THE COMMISSIONER: When you call them "highly competitive" do you mean they are lower grade?

MR. KELLOCK: Yes; Mr. Lundy's evidence, as far as

at the top of page 10 I submit that --

"The price stabilization agreement those mills entered into was for the purpose of attempting to stabilize a few lines of highly competitive goods so as to sell them at not too great a loss.

It is quite true that the agreement in regard to a few lines of women's and children's apparel underwear is still in effect, but it is probable that these over highly competitive lines which are generally sold below cost, are that there no undue advantagement of the price to the consumer".

The CHAIRMAN: Why do you say "generally sold below cost"? Is that a permanent state of affairs?

Mr. BURNS: There is no evidence of that.

The CHAIRMAN: It is a rather unusual thing to be told that. Why are they being manufactured if they are being sold below cost?

Mr. BURNS: We had better import these and save the mills the penalty.

Mr. MILLOOK: I cannot say --

The CHAIRMAN: Is it just to fill up your warehouses?

Mr. MILLOOK: It does that. Unless you want to retire from the field entirely you have to meet the prices that are quoted.

The CHAIRMAN: When you call them "highly competitive" do you mean they are based upon

Mr. MILLOOK: Yes; Mr. Lamb's estimates, on the

the Penman Company was concerned, he said they were the cheaper class of goods.

MR. McRUER: He said they were the class of goods poorer people would have to buy.

MR. KELLOCK: That was my friend's language.

MR. McRUER: He agreed with it.

MR. KELLOCK: "In regard to fleece lined sleepers, I submit that the remarks made by the Commission Counsel about Mr. Hallam and Mr. Gundy are uncalled for and unwarranted. The Commission Counsel says in his factum (page 340), that Mr. Hallam said, in writing letters such as Exhibit 708, he was merely carrying out instructions and had little knowledge of what was taking place. I submit that this is a fact. Commission Counsel must be fully aware of the tremendous amount of detail that passes through Mr. Hallam's office, and I venture to say that Mr. Hallam could not tell you off hand what a fleece lined sleeper is"--

THE COMMISSIONER: Just a minute; 708, is that the hosiery agreements -- no, knit goods agreement --

MR. KELLOCK: No, that is just a letter, my lord.

MR. McRUER: A letter notifying another set of companies at what price one company -- I think it was the Zimmerknit had put -- no, Moodies -- what price they had put on their sleepers, and the letters were sent out to the others to tell them this was the price, and Mr. Hallam did not seem to know much about that in

the Tenman Company was concerned, he said they were the cheaper class of goods.

MR. McCARTHY: He said they were the class of goods poorer people could have to buy.

MR. MILLOCK: That was my friend's language.

MR. McCARTHY: He agreed with it.

MR. MILLOCK: "In regard to Fleece Lined sleepers, I submit that the remarks made by the Commission Counsel about Mr. Hallam and Mr. McCarthy are unwilled for and unwarranted. The Commission Counsel went in his factum (page 240), that Mr. Hallam said, in written letters such as Exhibit 708, he was merely carping out instructions and had little moral sense of what was taking place. I submit that this is a fact. Commission Counsel must be fully aware of the tremendous amount of detail that passes through Mr. Hallam's office, and I venture to say that Mr. Hallam could not tell you off hand what a Fleece lined sleeper is"--

THE COMMISSIONER: Just a minute; 708, in that the Hosiery agreement is -- no, knit goods agreement --

MR. MILLOCK: No, that is just a letter, my lord.

MR. McCARTHY: A letter notifying another set of manufacturers of what Tenman -- I think it was the Zimmermann had put -- pyjamas -- what styles they had put on their sleepers, and the letters were sent out to the others to tell them this was the style, and Mr. Taylor did not know it was that kind [illegible]

his evidence.

THE COMMISSIONER: He writes to Penmans and he said:

"Arrangements have been completed whereby Children's Fleece Linted Sleepers for Fall 1936 will be listed at the following prices", and he deals with them -- "these goods are as a rule, boxed ½ dozens, but if wanted papered in one dozens, no change in these prices is to be made".

That is the letter.

MR. KELLOCK: Yes, my lord. He said he was merely carrying out instructions and I submit that is the fact, and there is nothing to contradict it.

THE COMMISSIONER: Canadian Woollen & Knit Goods Manufacturers Association.

MR. McRUER: That he did not know anything about it.

MR. KELLOCK: The evidence is only some of the companies making these articles, in the Association, were parties to these prices with regard to these articles, and that there other companies which manufactured them as well which took no part.

Now, my lord, I have also attached tables which support the figures which I have discussed in the text in the same way. Then, I come to the woollen division, my lord, and this is the division where we find the companies which were interested in the making of worsted cloth.

" Under the heading 'Woollen Division' the

"Commission Auditor in Exhibit 1017 gives a statement of the operations of a group of mills for the ten years period 1926 to 1935, the sample containing 19 mills in 1926 and 1927 and gradually increasing until there are 28 mills in 1934 and 1935. This sample contains mills that only spin, mills that produce woollen cloth from the raw material to the finished article, mills that only weave worsted cloth and do not dye and finish, mills that specialize in high style cloth for women's garments, mills that produce knit goods as well as cloth, mills that spin yarn, weave worsted cloth and dye and finish, and mills that produce carpets, paper makers felts and blankets.

On page 2, Exhibit 1017, the Commission Auditor describes revenue from operations as 'net profit from operations', and as 'total net profit' the sum of the operations with miscellaneous income added. It is submitted that this erroneous use of a well understood accounting term has the effect of making it appear that profits are higher than they actually are, and that this term 'total net profit' is again used on page 5 to describe the revenue from operations of the individual mills in the sample after adding miscellaneous income and before deducting bond interest and income taxes".

So that you have to know just what is referred to by these phrases if you are not to fall into error.

THE COMMISSIONER: Yes; well, for my purposes it

Commission Auditor in Exhibit 1017 gives a statement of the operations of a group of mills for the ten years period 1926 to 1935, the sample consisting 19 mills in 1926 and 1927 and gradually increasing until there are 28 mills in 1934 and 1935. This sample includes mills that only spin, mills that produce woolen cloth from the raw material to the finished article, mills that only weave worsted cloth and do not dye and finish, mills that specialize in high style cloth for women's garments, mills that produce knit goods as well as cloth, mills that spin yarn, weave worsted cloth and dye and finish, and mills that produce crepes, crash, mohair, tuftd and blanketing.

On page 2, Exhibit 1017, the Commission auditor [illegible] 'net income' [illegible] 'net profit' as a [illegible] of the operations with miscellaneous income added. It is admitted that this erroneous use of a well understood accounting term has the effect of making it appear that profits are higher than they actually are, and that this term 'total net profit' is again used on page 5 to describe the revenue from operations of the individual mills in the sample after adding miscellaneous income [illegible] 'net income'.

is a good thing for me to have both.

MR. KELLOCK: Very well, my lord. I am just pointing out that --

THE COMMISSIONER: It is alright, I understand.

MR. KELLOCK: When you look at the exhibits you have to be careful.

"The 'ratio of net profit from operations to capital employed in the industry', as set up by the Commission Auditor and the correct figures are given in the following table:"-- Now, exhibit 1017 shows "ratio of net profit from operations to capital employed in the industry as adjusted for appraisal write-ups", and I show the "statement of net profits including miscellaneous income to shareholders equity".

MR. McRUER: Why should you include miscellaneous income if it is income from something that is not employed in the industry?

MR. KELLOCK: It is net profit to the company.

MR. McRUER: No, if they have invested their surplus funds in something that they lose money on why can you, in this character of an inquiry, ask for tariff protection to take care of that sort of thing?

MR. KELLOCK: Of course, my friend assumes - and I have already dealt with the argument and I don't want to repeat it -- my friend assumes that the miscellaneous revenue always comes from something that is permanently invested outside the business.

THE COMMISSIONER: What do you mean by that?

is a good time for us to have lunch.

Mr. [illegible]: Very well, my lord. I am just pointing out that --

The [illegible] it is alright, I understand.

Mr. Addison: When you look at the exhibits you have to be careful.

"The ratios of net profit from operations to capital employed in the industry", as set up by the Commission Auditor and the correct figures are given in the following table:"--

Now, exhibit 1017 shows "ratio of net profit from operations to capital employed in the industry as adjusted for excessive write-ups", and I show the "statement of net profits including annual income to shareholders equity".

Mr. Justice: Why should you include annual income if it is income from something that is not employed in the industry?

Mr. Addison: It is net profit to the company.

Mr. Justice: No, if they have invested the insurance funds in something that they lose money on why can you, in this character of an inquiry, ask for tariff protection to make good of the [illegible] of?

Mr. Addison: I course, my friend suggests - and I have already dealt with the argument and I don't want to repeat it -- my friend suggests that the [illegible] from something that is permanently [illegible] in the business.

[illegible]

MR. KELLOCK: It comes, my lord, from investments outside the business, but they might be used from time to time as the company needs the money. For instance, for additional inventory or expansion of its plant or something of that kind.

THE COMMISSIONER: You mean to say their investments outside the business and the monies are taken out of that investment and brought back into the company; is that what you mean?

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: I understand that, but if, while they are in outside investments they suffer a loss or make profits what has that to do with the business?

MR. KELLOCK: I would not argue that.

THE COMMISSIONER: Why do you conclude that?

MR. KELLOCK: My lord, if you take out the income from those investments then you reduce the net profit of the company.

THE COMMISSIONER: I know, but suppose you do that.

MR. KELLOCK: Well, one could do that.

THE COMMISSIONER: Anyhow, that is what it means.

MR. KELLOCK: Yes.

THE COMMISSIONER: Investments outstanding, not money you have brought back from investments, investments still outstanding.

MR. KELLOCK: Insofar as these companies had such investments, yes. It includes income from that.

MR. McRUER: We have dealt with that as if it

MR. KELLOCK: It comes, my lord, from investments outside the business, but they might be used from time to time as the company needs the money. For instance, for additional investmy or expansion of its plant or something of that kind.

THE COMMISSIONER: You mean to say their investments outside the business and the profits are taken out of that investment and brought back into the company; is that what you mean?

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: I understand that, but if, while they are in outside investments they either lose or make profits what has that to do with the business?

MR. KELLOCK: I would not argue that.

THE COMMISSIONER: Why do you complain that?

MR. KELLOCK: My lord, if you take out the income from those investments then you reduce the net profit of the company.

THE COMMISSIONER: I know, but suppose you do that.

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MR. KELLOCK: Yes.

THE COMMISSIONER: Investments outstanding, not money you have brought back from investment, investments still outstanding.

MR. KELLOCK: Insofar as these companies had such investments, yes. It includes income from that.

MR. [illegible] we have dealt with [illegible] it

was not capital invested in the industry. We say it is capital invested in something else.

THE COMMISSIONER: Well, of course it cannot be two places at once, unless it is a bird or something like that.

MR. KELLOCK: Quite so. The differences appear there, my lord. 1926, instead of 6% it is 4.6%. 1927 instead of 6.2% it is 4.8%. 1928 instead of 2.8% it is 2.1%. 1929 instead of 3.8% it is 2.9%. 1930 instead of .5% it is .3% loss. 1931, instead of 1.2% loss it is 1.9% loss. 1932, instead of 1.9% it is .9%. 1933, instead of 5.8% it is 4.8%. 1934, instead of 5.6% it is 4.7%. 1935, instead of 6.3% it is 4.7%, and the average is 2.7%. My friend, in his factum --

> "— says that during the 10 years period 1926 to 1935 there was only one year, i.e. 1931, during which the reporting mills did not make a profit on capital invested."

Now, my friend, of course, is there talking about profit from all sources. I submit if you are talking about the mills themselves that statement is inaccurate and the figures I have given show losses in 1930 and 1931.

THE COMMISSIONER: Is that where you differ or do you differ on the meaning of the words "capital invested"?

MR. KELLOCK: Well, we do differ on the words "capital invested", my lord, yes.

was not capital invested in the industry. We say it is capital invested in something else.

THE CHAIRMAN: Well, of course it cannot be two places at once, unless it is a bird or something like that.

MR. [illegible]: Quite so. The difference appears there, my lord. 1927, instead of 6% it is 4.6%. 1927 instead of 6.2% it is 4.8%. 1928 instead of 8.8% it is 2.1%. 1929 instead of 8.8% it is 2.4%. 1930 instead of .8% it is .5% loss. 1931, instead of 1.8% loss it is 1.9% loss. 1932, instead of 1.9% it is .9%. 1933, instead of 5.8% it is 4.8%. 1934, instead of 5.8% it is 4.7%. 1935, instead of 5.8% it is 4.7%, and the average is 2.7%. My friend, in his factum --

"-- says that during the 10 years ended 1936 to 1935 there was only one year, i.e. 1934, during which the reporting mills did not make a profit on capital invested."

Now, my friend, of course, is there talking about [illegible]. I [illegible] the [illegible] and the figures I have given [illegible] in 1930 and [illegible].

[illegible]. Do you where you differ or do you differ on the meaning of the words "capital invested"?

[illegible]: Well, we do differ on the words "capital invested", as [illegible], I am.

THE COMMISSIONER: That is what I thought.

MR. KELLOCK: We differ on capital investment. My friend includes in his capital employed capital from all sources at one day in the year, and I, of course, have dealt with that, and your lordship has my argument fully.

THE COMMISSIONER: Your contention is there is more capital invested than Mr. McRuer has.

MR. KELLOCK: No, mine would be less, my lord, because my friend's capital employed --

THE COMMISSIONER: If your capital is less your profits are higher.

MR. KELLOCK: You see, there are two things, at both ends. At the one end my friend includes borrowed capital from any source. I say no, I am dealing only with the shareholders' invested capital which is a smaller figure. My friend, when he sets out his net profit against capital employed includes bond interest which has not yet been paid, bank interest which has not been paid and income tax, the first two being the return on this borrowed capital. I take, in the first place, the shareholders' capital and the return to the shareholders which is the final net profit after bond interest, bank interest and income taxes.

MR. McRUER: You don't take the shareholders' capital. You take the shareholders so-called equity irrespective of whether any capital has been put in or not.

MR. KELLOCK: When you say shareholders do you mean the no

MR. ALLOCK: No differ on capital investment. My friend includes in his capital employed capital from all sources at one day in the year, and I, of course, have dealt with that, and your Lordship has my argument fully.

THE LORD CHAIRMAN: Your contention is there is more capital invested than Mr. Mother has.

MR. ALLOCK: No, mine would be less, my lord, because my friend's capital employed --

[illegible] in particular [illegible] your profits are higher.

MR. ALLOCK: You see, there are two things at both ends. At the one end my friend includes borrowed capital from any source. I say no, I am dealing only with the shareholders' invested capital which is a smaller figure. My friend, when he sets out his net profit against capital employed includes bond interest which has not yet been paid, bank interest which has not been paid and income tax, the first two being the return on this borrowed capital. I take, in the first place, the shareholders' capital and the return to the shareholders [illegible] net profit after bond interest, bank interest and income tax.

MR. MORGAN: You don't take the shareholders' capital. You take the shareholders capital only [illegible] capital [illegible] MR. ALLOCK.

[illegible]

you mean the nominal par value of the shares? I do not mean that at all. I mean, as I have explained a number of times, the shareholders' investment in the business.

MR. McRUER: Not his investment in the business; you take goodwill in.

MR. KELLOCK: I mean, as I explained a number of times to my friend, the net assets of the business, my lord, assets less liabilities.

THE COMMISSIONER: Whatever you mean, the result is that so far you have been claiming you had more capital invested than Mr. McRuer claims and now you seem to be claiming you have less.

MR. KELLOCK: I think we have contended we had more capital.

THE COMMISSIONER: I thought you did. I thought you said Mr. Howson's basis was wrong because he called capital --

MR. KELLOCK: I see what you mean. What I was referring to there, my lord, is that Mr. Howson's figures of capital employed, while they include borrowed capital, do not include anything but tangible capital and therefore I do include intangibles.

THE COMMISSIONER: That is what I say.

MR. KELLOCK: Yes, my lord, I am quite sorry. Now, my lord, at page 211 of my friend's factum there is a statement --"that the record of this industry"--

THE COMMISSIONER: Hold on now, page 211, Mr. McRuer's factum?

you mean the nominal par value of the shares? I do not mean that at all. I mean, as I have explained a number of times, the shareholders' investment in the business.

MR. MORRER: Not his investment in the business; you take goodwill in.

MR. ALLCOCK: I mean, as I explained a number of times to my friend, the net assets of the business, my lord, assets less liabilities.

THE COMMISSIONER: Whatever you mean, the result is that so far you have been claiming you had more capital invested than Mr. Hower claims and now you seem to be claiming you have less.

MR. ALLCOCK: I think we have contended we had more capital.

THE COMMISSIONER: I thought you did. I thought you said Mr. Howson's basis was wrong because he called capital --

MR. ALLCOCK: I see what you mean. What I was referring to there, my lord, is that Mr. Howson's figures of capital employed, while they include borrowed capital, do not include anything but tangible capital and therefore I do include intangible.

THE COMMISSIONER: That is what I say.

MR. ALLCOCK: Yes, my lord, I am quite sorry. Now, my lord, at page 211 of my friend's inventory there is a statement -- "Work in progress or this inventory" --

THE COMMISSIONER: Half way down, page 211, Mr. Hower's inventory

MR. ALLCOCK: Yes, my lord, I am quite sorry.

MR. KELLOCK: Yes, my lord, I repeat the statement there.

THE COMMISSIONER: You refer to that here.

MR. KELLOCK: Yes, I do. My friend states --

"--that the record of this industry during the depression years was an extremely enviable one and that it showed higher earnings on capital invested in the business than in the pre-depression years, also that this enviable record was at the expense of the consumers",

and I submit the facts are as I set them out here. I show the net profit including miscellaneous income as a % of Shareholders' Equity. In 1926 it was 4.6%. 1927 4.8%. 1928 2.1%. 1929, 2.9%. and up to that point the average is 3.7%. Then, 1930, .3 loss, 1931 1.9 loss, 1932 .9, 1933 --

THE COMMISSIONER: Profit.

MR. KELLOCK: Profit, my lord, 1933, 4.8% profit and for those four years the average is .8% profit. 1934, 4.7%, 1935 --

THE COMMISSIONER: Profit.

MR. KELLOCK: Profit again, and the same thing in 1935, and the average being exactly the same.

MR. McRUER: Are Dominion Woollens & Worsteds included in your list?

MR. KELLOCK: Yes, and I am going to deal with my friend's contention about them when I come to it.

" It is obvious that in the pre-depression period, 1926 to 1929, this division made average profits of only 3.7%. Certainly a better return

MR. KNOWLOCK: Yes, my lord, I repeat the statement there.

THE CHAIRMAN: You refer to that here.

MR. KNOWLOCK: Yes, I do. My friend states --

"--that the record of this industry during the depression years was an extremely enviable one and that it showed higher earnings on capital invested in the business than in the pre-depression years, also that this enviable record was at the expense of the consumers".

and I submit the facts are as I set them out here. I show the net profit including miscellaneous income as a % of shareholders' equity. In 1928 it was 4.8%, 1929 4.6%, 1930 2.1%, 1931 -3.2%, and up to that point the average is 2.7%. Then, 1932, .5 loss, 1933 1.8 loss, 1934 .9, 1935 --

THE CHAIRMAN: Profit.

MR. KNOWLOCK: Profit, my lord, 1928, 4.8% profit and for those four years the average is .5% profit. 1934, 4.7%, 1935 --

THE CHAIRMAN: Profit again, and the same thing in 1935, with the average being exactly the same.

MR. McGUIGAN: Are Dominion Woollens & Worsteds included in your list?

MR. KNOWLOCK: Yes, and I am going to deal with my friend's contention about that when I deal with it.

It is obvious that in the pre-depression period, 1928 to 1931, this division made average profits of only 2.7%. Certainly a 2.7% -

"could have been obtained from Government bonds during this period, so that the profit shown is far below what would be a fair return for capital employed in manufacturing enterprises of this nature. In this connection, it should be noted that the cloth mills included in this division had been driven down by 1930 to a point where they had only 23.3% of the home market, while mills in foreign countries supplied 21.4% and mills in Great Britain 55.3%. In the four depression years the return of the division was 0.8% of the shareholders' equity. This return was made on an ever increasing production"--

MR. McRUER: You say the cloth mills had been driven down by 1930. Was it not a fact that the production of the Canadian cloth mills had been increasing up till 1930?

MR. KELLOCK: My instructions are the other way. If you have the figures --

MR. McRUER: That the production of the Canadian mills had gone down in 1930, by 1930; was there not some new mills starting up here and all that sort of thing? Wasn't Dominion Woollens and Worsteds incorporated about 1928 with very glowing statements as to what they would do.

MR. KELLOCK: Well, I am instructed that the production of the Canadian mills in 1933 was exactly the same as in the year 1897.

MR. McRUER: 1933, I am talking about 1930.

MR. KELLOCK: I know you are.

"Small Scottish concerns fare comparatively poorly during this period, so that the profit shown is far below what would be a fair return for capital employed in manufacturing enterprises of this nature. In this connection, it should be noted that the cloth mills included in this division had been driven down by 1920 to a point where they had only 26.8% of the home market, while mills in foreign countries supplied 21.4% and mills in Great Britain 52.3%. In the four succeeding years the return of the division was 0.8% of the shareholders' equity. This return was made on a very low selling production"--

MR. BARNES: You say the cloth mills had been driven down by 1920. Was it not a fact that the production of the Canadian cloth mills had been increasing up till 1920?

MR. MILLSON: By industries are the other way. If you have the figures --

MR. McBRIDE: That the production of the Canadian mills had gone down in 1920, by 1920; was there not some new mills starting up here and all that sort of thing? [illegible] imported about 1920 with very glowing statements as to what they would do.

MR. MILLSON: Well, I am interested that the production of the Canadian mills in 1920 was about the same as in the year 1897.

[illegible] 1921, I am [illegible].

Mr. [illegible] [illegible].

MR. McRUER: You say,--"In this connection, it should be noted that the cloth mills included in this division had been driven down by 1930 to a point where they had only 23.3% of the home market".

THE COMMISSIONER: That would imply to me that there had been a period of decline culminating in 1930; that is a fact, is it?

MR. KELLOCK: Yes, my lord, those are my instructions.

THE COMMISSIONER: When did the decline begin?

MR. McRUER: We have the actual production of the Canadian mills over a period of years. 23% of the home market might mean more in 1930 than 30% was in 1926.

MR. KELLOCK: My lord, if there is any question about that, I want to be accurate. We will have to get the figures.

THE COMMISSIONER: It is of some importance because it shows the trend of the particular business.

MR. KELLOCK: I am instructed, subject to correction, that the trend commenced about ~~1923~~ 1923 or 1924.

THE COMMISSIONER: Well, look it up and let us know more about it.

MR. KELLOCK: The Canadian production in 1930 was 5,200,000 lineal yards. 1931, 7,300,000. 1932, 10,300,000. 1933,13,300,000. 1934, 13,900,000 and 1935 14,700,000.

" It can hardly be said that a return of less than 1% on shareholders' equity in the four years

"depression period 1930 to 1933 proves the Commission Counsel's contention that these mills were prospering unduly at expense of the consumers. In the figures of the Commission Counsel he excludes the largest and least profitable Company in the industry because it was the least profitable. It is submitted that the difficulties of this company started under the inadequate tariffs existing prior to 1930, while worsted weaving yarns, of which this company was and is now the largest producer, were on the free list from Great Britain and the share of the Canadian cloth weaving mills had been driven down"-- this is the same thing --"to only 23.3% of the Canadian home market."

MR. McRUER: Just let us see --

THE COMMISSIONER: That is correct there, what you say about this company?

MR. KELLOCK: It is Dominion Woollens, my lord.

THE COMMISSIONER: That the cause of their suffering is the inadequate tariff before 1930; they were organized before 1930 under that tariff?

MR. KELLOCK: About 1928, my lord.

MR. McRUER: You say they started under inadequate tariff.

THE COMMISSIONER: Well, they knew what they were doing.

MR. KELLOCK: Oh yes.

THE COMMISSIONER: And we know what they did.

MR. KELLOCK: And there was a change in the tariff

in 1928.

THE COMMISSIONER: That is when they started.

MR. KELLOCK: I am told it was after they organized that the change took place.

MR. McRUER: It was very little, anyway, but the fact was that the Forbes Company which went into that company had been a highly profitable company up until it got mixed up with these folk.

MR. KELLOCK: I deal with the Forbes Company a little later on.

" It has already been shown" in my factum, and I refer to the place --"that the price per yard of cloth declined steadily between 1931 and 1935 much more than the reduction in the raw materials. It is submitted that this was due to the increased production and that the public was not exploited under the tariff.

When the figures submitted in Exhibit 1017, pages 1 to 6 and 7 and 8, are interpreted in the light of common business accounting, it is submitted that whether the original large sample is taken, or the large sample less one mill, or whether the ten years period is taken as a whole or each year examined separately, that there is no sign of any undue profits being made by this industry, or advantage taken of the tariff to unduly enhance prices in order to make a large profit.

Commission Counsel submits a so called representative sample of 13 mills chosen from"

in time.

THE CHAIRMAN: That is when they started.

Mr. McLEOD: I am told it was after they organized that the change took place.

Mr. McKAY: It was very little, anyway, but the fact was that the Forbes Company which was the tobacco company had been a highly profitable company up until it got mixed up with these folk.

Mr. McLEOD: I deal with the Forbes Company a little later on.

" It had already been shown" in my testimony and I refer to the page -- "that therefore per year of the combined stability between 1921 and 1925 made more than two reductions in the case mentioned. It is submitted that this was due to the increased consumption and that the public was not exploited under the tariff.

Then the figures submitted in Exhibit 1070 pages 1 to 6 and 7 and 8, are interpreted in the light of common business accounting. It is established that whether the original large profits in tobacco, or the large profits from corn mill, or whether the two years yielded in tobacco as a whole or each year examined separately, that there is no sign of any undue profiteering made by this industry, or advantage taken of the tariff to unduly enhance profits to enable to make a large profit.

the representative companies; that is what I meant by "available sample".

"It is submitted that this sample is not representative of either" the reporting companies less Dominion Woollens or with Dominion Woollens,

"as the returns obtained in the so called representative sample are higher in every single year than the returns obtained" in taking the whole group with Dominion Woollens or without it.

My friend has also commented on four of the mills in the reporting companies and I set out where.

(page 17279 follows)

Now, with regard to the Brook Woollen Company, which is one of the more profitable mills, my lord.

" The Brook Woollen Company produces women's fabrics and the risk inherent in this business calls for a higher return on operations than on mills producing bread-and-butter lines. This mill, as shown by the figures when they are properly read, is a profitable mill, but the figures as put forward by the Commission Auditor do not correctly represent the facts".

That is, the return to the company itself. My friend uses --

MR. McRUER: Now, you say the figures the auditor uses do not correctly represent the facts. In what way do Mr. Howson's figures not correctly represent the facts because he sets out the return on capital invested; he sets out the return on common stock equity; he sets out all the different branches of return. Now, where has Mr. Howson not properly represented the facts?

MR. KELLOCK: I have explained it a number of times, in the use of the word capital employed and the return on it.

MR. McRUER: He sets out all the things.

MR. KELLOCK: For one day only.

MR. McRUER: I say, as I said yesterday, I resent that statement being made about a man whose integrity you cannot challenge and no other person that knows him.

MR. KELLOCK: I have already said I have no

Mr. [illegible] of the Great Golden Fleece, which is one of the more profitable mills, my lord.

"The Great Golden Fleece produces [illegible] fabrics and the risk inherent in this business calls for a higher return on operations than on mills producing bread-and-butter lines. This mill, as shown by the figures when they are properly read, is a profitable mill, but the figures as put forward by the Commission Auditor do not correctly represent the facts".

That is, the return to the company itself. My friend says --

Mr. McKim: Now, you say the figures the auditors do not correctly represent the facts. In what way do Mr. Howson's figures not correctly represent the facts because he sets out the return on capital invested; he sets out the return on a common stock equity; he sets out all the different measures of return. Now, where has Mr. Howson not properly represented the facts?

Mr. McKinnon: I have explained it a number of times, in the use of the word capital employed and the return on it.

Mr. McKim: He sets out all the things.

Mr. McKinnon: For one day only.

Mr. McKim: I say, as I said yesterday, I resent the aspersions being cast about me from Ellwyn [illegible] and on other persons but [illegible] him.

Mr. [illegible] I have already said I have no

intention whatsoever of challenging Mr. Howson's integrity. I am dealing with whether or not the exhibit is accurate or not. That has nothing to do whatever with Mr. Howson's integrity.

THE COMMISSIONER: I do not think there is any slur on anybody's integrity. It may be a comment on his ability or accuracy; that is all.

MR. McRUER: Even at that I cannot let it pass. Take the Brook Woollen Company's statement in exhibit 1003. The first statement is capital employed in operations and the next line is capital employed outside operations, all the way across the page. Then, total capital employed.

THE COMMISSIONER: Are you talking of their own return?

MR. McRUER: This is Mr. Howson's compilation from their return. You have their whole capital employed; then, deduct bank loans.

THE COMMISSIONER: Does Mr. Howson leave out of that summary of capital employed something that the company's questionnaire would indicate ought to be in it?

MR. McRUER: No, there is nothing left out of it.

THE COMMISSIONER: Or that Mr. Kellock says ought to be in.

MR. McRUER: I cannot imagine what should be in it. The first line is capital employed in operations. Everything is stated there.

MR. KELLOCK: In this case there would be some-

intention whatsoever of challenging Mr. Hewson's integrity. I am dealing with whether or not the exhibit is accurate or not. That has nothing to do whatever with Mr. Hewson's integrity.

THE COMMISSIONER: I do not think there is any fear or anybody's integrity. It may be a comment on his ability or accuracy; that is all.

MR. McNEIR: Even at that I cannot let it pass. Let the issue involve Hewson's evidence in toto.

100%. The first statement is capital employed in operations and the next line is capital employed outside operations, all the way across the page. Then, total capital employed.

THE COMMISSIONER: Are you taking it off their own return?

MR. McNEIR: This is Mr. Hewson's compilation from their return. You have their whole capital employed; then, deduct bank loans.

THE COMMISSIONER: Does Mr. Hewson leave out of that summary of capital employed something that the company's questionnaire would indicate ought to be in it?

MR. McNEIR: No, there is nothing left out of it.

THE COMMISSIONER: Or that Mr. Hallock says ought to be in it.

MR. McNEIR: I cannot identify what should be in it. The claim that the capital employed is [illegible], overvaluing is [illegible].

MR. HALLOCK: In this case there would be [illegible]

3

thing included there because the company had bank loans, and paid substantial bank interest as that page shows, and therefore capital employed includes this borrowed capital.

MR. McRUER: That is shown on the statement. It shows capital employed outside the industry. That is all shown. The next line is total capital employed. Then, deduct bank loans. Now, it is shown that bank loans were shown in the capital employed. Now, there is nothing inaccurate. Then, the common stock equity is shown. Then, they show the revenues, revenue from operations and then percentage to capital employed in operations. Now, that is as clear as it can be, what it means. Revenue from outside investments is shown and then total revenue is shown. Then, percentage to total capital employed is shown. Take both things and they are shown on here. Then, deduct bank interest.

MR. KELLOCK: After that.

MR. McRUER: It is shown here, and he does it on this; deduct bank interest, deduct income taxes. They are shown. Net revenue applicable to common stock equity; percentage to common stock equity. That is all shown on here, and then down in the lower part sales are shown, and then gross profit before depreciation, percentage to sales. Gross profit after depreciation is shown and the percentage to sales, and then net profit is shown and the percentage to sales.

Now, to say that this does not correctly show the facts is most unfair to an auditor. He shows every-

thing included there because the company had bank loans, and paid substantial bank interest as that shows, and therefore capital employed includes this borrowed capital.

MR. McLEAN: That is shown on the statement.

It shows capital employed outside the industry. That is all shown. The next line is total capital employed. Then, deduct bank loans. Now, it is shown that bank loans were shown in the capital employed. Now, there is nothing inaccurate. Then, the common stock equity is shown. Then, they show the revenues, revenue from operations and then percentage to capital employed in operations. Now, that is as clear as it can be, what it means. Revenue from outside investments is shown and then total revenue is shown. Then, percentage to total capital employed is shown. Take both things and they are shown on here. Then, deduct bank int rest.

MR. McLEAN: After that.

MR. McNAB: It is shown here, and be down it on this; deduct bank interest, deduct income taxes. They are shown. Net revenue applicable to common stock equity; percentage to common stock equity. That is all shown on here, and then down in the lower part sales are shown, and then gross profit before depreciation, percentage to sales. Gross profit after depreciation is shown and the percentage to sales, and then net profit is shown and the percentage to sales. No, to say that this does not correctly show the income in some detail is not reality. We have ex-

thing on it, and anyone reading it cannot help but see that bank loans are included in total capital employed, and they are deducted.

THE COMMISSIONER: Deducted from what goes to the shareholders' equity.

MR. McRUER: Yes, my lord.

THE COMMISSIONER: Of course, they have to be there.

MR.McRUER: It is deducted, and it is shown as common stock equity.

THE COMMISSIONER: Later on when he talks of net profits that means net profit on operations.

MR. McRUER: He shows revenue from operations and then percentage to capital employed in operations, and then revenue from outside investments and percentage to capital employed, or he gives outside revenue and then gives the percentage to total capital employed. Bot sides of it are shown on the statement.

THE COMMISSIONER: Yes. Before he strikes his figure for net profits there he does not deduct interest paid, does he?

MR. McRUER: Yes, deduct bank interest and deduct income taxes, and then net revenue applicable to common stock equity.

THE COMMISSIONER: Yes, that is right, that is quite right. But later on when he gives what he calls net profits --

MR. McRUER: That is on sales.

THE COMMISSIONER: Yes.

MR. McRUER: Net profit on sales. He doesn't deduct bank interest there.

employed, and they are deducted.

THE COMMISSIONER: Deducted from what goes to the shareholders' equity.

MR. McRUER: Yes, my lord.

THE COMMISSIONER: Of course, they have to be there.

MR. McRUER: It is deducted, and it is shown as common stock equity.

THE COMMISSIONER: Later on when he talks of net profits that means net profit on operations.

MR. McRUER: He gives revenue from operations and then percentage to capital employed in operations, and then revenue from outside investments and percentage to capital employed, or he gives outside revenue and then gives the percentage to total capital employed. Both sides of it are shown on the statement.

THE COMMISSIONER: Yes. Before he attributes his figure for net profits there he does not deduct interest paid, does he?

MR. McRUER: Yes, deduct bank interest and deduct income taxes, and then net revenue applicable to common stock equity.

THE COMMISSIONER: Yes, that is right, that is quite right. But later on when he gives what he calls net profits --

MR. McRUER: That is on sales.

THE COMMISSIONER: Yes.

MR. McRUER: Net profit on sales. He doesn't deduct bank interest there.

THE COMMISSIONER: Yes, that is right. For our purposes he should not deduct it.

MR. McRUER: No.

THE COMMISSIONER: Now, Mr. Kellock has been giving me figures where he, Mr. Kellock, does deduct them and that shows another result, of course. I am pleased to have both, but I do not see what fault can be found with Mr. Howson's way of compiling these figures.

MR. KELLOCK: My lord, may I explain what I mean?

THE COMMISSIONER: Yes.

MR. KELLOCK: At the foot of the page net profit is shown as a percentage to sales. Now, that is the last thing on the sheet. Up above you find net revenue applicable to common stock equity, and that is after these expenses, bank interest and income taxes, are taken out.

THE COMMISSIONER: Well, of course.

MR. KELLOCK: Yes, my lord. Now, there are no other shares in this company except common shares so that the net revenue in this case applicable to common stock equity is the net revenue of the company or its shareholders, but when we come down to the foot of the page the net profit of the company to sales is not that figure at all, my lord.

THE COMMISSIONER: Well, of course it is not that figure at all.

MR. KELLOCK: It is the total revenue of the company.

MR. McRUER: The revenue from operations, not

THE COMMISSIONER: Yes, that is right. For that purposes we should not deduct it.

MR. MORLEY: No.

THE COMMISSIONER: But, Mr. Kellock has been giving me figures where he, Mr. Kellock, does deduct them and that shows another result, of course. I am pleased to have both, but I do not see what result can be found with Mr. Lawson's way of compiling these figures.

MR. KELLOCK: My lord, may I explain what I mean?

THE COMMISSIONER: Yes.

MR. KELLOCK: At the foot of the page not such is shown as a percentage to sales. Now, that is the last thing on the sheet. Up above you find net revenue applicable to common stock equity, and that after these expenses, bank interest and income taxes, are taken out.

THE COMMISSIONER: Well, of course.

MR. KELLOCK: Yes, my lord. Now, there are no other shares in this company except common shares so that the net revenue in this case applicable to common stock equity is the net revenue of the company or its shareholders, but when we come down to the foot of that page the net profit of the company we make is by that figure at all, my lord.

THE COMMISSIONER: Well, of course it is not that figure at all.

MR. KELLOCK: It is the total revenue of the company.

MR. MORLEY: The revenue from operations, not

total revenue of the company.

THE COMMISSIONER: You see, you are back to the old question. I am not confused about it at all. I say that sheet sets out the whole thing. It shows what properly goes to the shareholders' equity. I know that. That can only come there after you have paid your interest and everything else, but when you want to get a picture of the success or non-success of the operations of the company then Mr. Howson has it right. You cannot come and tell me we had to pay so much interest to the bank and our operations were not profitable. From my point of view that is of no concern to me.

MR. KELLOCK: Well, your lordship has my point.

THE COMMISSIONER: I have your point, certainly I have, and I think Mr. Howson is perfectly right. He shows the whole picture.

MR. KELLOCK: Yes, we have got there the loans and we have got revenue from operations --

THE COMMISSIONER: Yes, yes.

MR. KELLOCK: Which in another place on the page is called net profit.

THE COMMISSIONER: That is for another purpose. It is net profit on yourx operations.

MR. McRUER: On sales.

THE COMMISSIONER: So long as I am not losing sight of the fact that you did borrow money, that you had to pay interest on that money, and that consequently what goes to the equity of your shareholders is a different figure from your profits, it

three quarters of the company.

THE COMMISSIONER: You see, you are back to the old question. I am not concerned about it at all. I say that sweep cuts out the whole thing. It allows what properly goes to the shareholders' equity. I know that. That can only come there after you have paid your interest and everything else, but when you want to get a picture of the success or non-success of the operations of the company [illegible] it right. You cannot come and tell me we had to pay so much interest to the bank and our operations were not profitable. From my point of view that is of no concern to me.

MR. [illegible]: I have your point, certainly I have, and I think Mr. Lemoine is perfectly right. He shows the whole picture.

MR. KELLOCK: Yes, we have got there the loans and we have got revenue from operations --

[illegible]

MR. KELLOCK: Which in another place on the page is called net profit.

THE COMMISSIONER: That is for fourth quarter. It is net profit on yearly operations.

MR. KELLOCK: On sales.

THE COMMISSIONER: So long as I am not losing sight of the fact that you did borrow money, that you had to pay interest on that money, and that consequently what goes to the equity of your shareholders is a different figure from your profits, it

is alright.

MR. KEILOCK: Very well.

-- The Commission adjourned for a short recess.

(page 17285 follows)

-- On resuming at 12 P.M.

MR. KELLOCK: I will give your lordship the same information, the same comparison, on that page in regard to the Paton Manufacturing Company, the difference being set out: In 1926 from 8% to 5.5%. In 1927 from 10.2% to 6.5%. In 1928 from 6.3% to 3.4%. In 1929 from 9.7% to 7.1%. In 1930 from 8.8% to 6.9%. In 1931 from 9.0% to 7.1%. In 1932 from 9.3% to 7.%. In 1933 from 9.2% to 5%. In 1934 from 7.3% to 4.3%. In 1935 from 1.9% to a loss of .2%. 1936 from a profit of 8.1% to 5.9%.

In connection with Paris-Wincey Mills Limited, I simply have given your lordship an average over the period 1926 to 1935 of 7%.

Then the Patons & Baldwins Limited:

> "This company is shown to be a relatively profitable company...."

There are some special considerations there I want to call your lordship's attention to. In the first place that the Canadian plant is a branch of a world-wide organization. It produces well-established and valuable brands, which were well known in this country before the Can dian branch was established, and theprofits of the Canadian branch would naturally depend on arrangements regarding management and raw materials between the parent company and the branch.

MR. McRUER: What does that mean?

MR. KELLOCK: Well,perhaps I can illustrate it

-- An recessing at 12 p.m.

MR. [illegible]: I will give your lordship the same information, the same comparison, on that page in regard to the Fraser Manufacturing Company, the difference being set out: In 1926 from 6% to 5.3%. In 1927 from 10.2% to 6.3%. In 1928 from 5.4% to 3.4%. In 1929 from 3.7% to 7.1%. In 1930 from 8.0% to 6.0%. In 1931 from 3.0% to 7.1%. In 1932 from 9.2% to 7.4%. In 1933 from 9.2% to 5%. In 1934 from 7.2% to 4.3%. In 1935 from 1.2% to a loss of .3%. 1936 from a profit of 3.1% to 5.3%.

In connection with Paris-Lowy Mills Limited, I simply have given your lordship an average over the period 1926 to 1935 of 7%.

Then the Peterborough Canning Limited:

"This company is known to be a relatively profitable concern....

There are some special considerations there I want to call your lordship's attention to. In the first place that the Canning plant is a branch of a world-wide concern. It produces well-established and valuable brands, which were well known in this country before the Canadian branch was established, and therefore the Canadian branch could economically expand to strengthen financial management and its marketing because the general company had the brands.

Q. Mr. [illegible]: Just one thing only

Q. [illegible] well, perhaps I can illustrate it

in this way that I was going to add to that that your lordship may recall the evidence - this company really has no capital structure of its own, it operates on loans from the parent company in England.

THE COMMISSIONER: Where is its office again?

MR. KELLOCK: In Toronto.

MR. McRUER: Does it manufacture nothing but worsted yarn?

MR. KELLOCK: Yes. I go into that a little bit further down on the page. I think there is a little bit of confusion in your reference to it in your factum and that is the reason I introduce it here. I say:

"Therefore, this company cannot be considered as a representative Canadian Company and is not comparable to independent Canadian manufacturers."

Now, in my friend's Factum, page 217, he sets out the Canadian Customs Duties under which is Company operates, and that is what I mean by a little confusion there.

"The tariff rate under which the bulk of the business done by this company is not tariff item 551a, as quoted by Commission Counsel, with the following British Preferential rates:

Ad valorem	10%
specific	7½%
both less 10%."	

but tariff item 551 with the following British preferential rates:

ad valorem	15%
specific	11¼%
both less	10%"

in this way that I was going to add to that that your Lordship may recall the evidence - this company really has no capital structure of its own, it operates on loans from the parent company in England.

The Commissioner: Where is its office exactly, Mr. Gallant, in Toronto.

Mr. Morden: Does it manufacture nothing but wrapping paper?

Mr. Gallant: Yes. I do know that a little bit further down on the page. I think there was a little bit of confusion in your reference to it in your factum and that is the reason I introduce it here. I say:

"Therefore, this company cannot be considered as a representative Canadian Company and is not competent to independent Canadian manufacture."

Now, in my friend's factum, page six, he sets out the Canadian Customs Duties under which in Company [illegible] and that is what I mean by a little confusion there.

"The tariff rate under which the bulk of the business done by this company is not tariff item 1005, as quoted by Commissioner Counsel, with the [illegible]

[illegible]
specific 7%
[illegible]"

but tariff item 001 with the following British [illegible]

[illegible]
ad valorem 15%
specific 11¢
[illegible]

Of course, those have since been changed.

MR. McRUER: I want to understand, if I am wrong on that.

MR. KELLOCK: The difference there is that 551 covers hand-knitting yarns and that sort of thing, and---

THE COMMISSIONER: According to your statement they enjoy a great preference than according to Mr. McRuer.

MR. KELLOCK: Yes.

THE COMMISSIONER: To what extent have these been reduced in the last budget?

MR. KELLOCK: 15% and 6¢, my lord. It is reduced to 6¢.

THE COMMISSIONER: The ad valorem stays as it was.

MR. KELLOCK: Yes, a reduction of 5½¢ on specific duty.

MR. McRUER: Which is the handknit yarns?

MR. KELLOCK: 551 is the hand-knitting. 551a is yarn and warp composed wholly of wool or imported by manufacturers for use exclusively in their own factories.

MR. McRUER: 551a is which?

MR. KELLOCK: Yarns for manufacturing. 551 is hand knitting yarn. Counter-sales yarns I am told is the better term.

THE COMMISSIONER: That is all they do, make yarns?

MR. KELLOCK: Yes. Then my friend contrasts the operation of the Orillia mill of the Dominion Woollens and Worsteds Limited with Paton & Baldwins

of course, those days since been changed.

MR. MORDEN: I want to understand, if I am wrong on that.

MR. MALLOCH: The difference there is that all covers wood-cutting rights and that sort of thing.

THE COURT OF APPEAL: According to your knowledge it is only a great overcharge than according to Mr. Morden?

MR. MALLOCH: Yes.

THE COURT OF APPEAL: To what extent have these been reduced in the last budget?

MR. MALLOCH: Big and by, my lord. It is reduced to 5%.

THE COURT OF APPEAL: Is ad valorem always as it was?

MR. MALLOCH: Yes, a reduction of 5% on specific duty.

MR. MORDEN: Which is the Manufacturers' Party?

MR. MALLOCH: Both is the free-trading. Both is pretty much equally anxious to have the manufacturers for use exclusively in their own factories.

MR. MORDEN: Which is which?

MR. MALLOCH: Terms for manufacturing. Both is land auctioning party. Conservative-Liberal party I am told is the better term.

THE COURT OF APPEAL: That is all they do, some former

MR. CHAMPION: Yes.

the operation of the Gatineau Mill of the Dominion

Limited, and says they are manufacturers of similar types of yarns. There is again confusion there. The Orillia mill produces fine weaving yarn for use in other plants of this company, and ---

THE COMMISSIONER: Of its own company?

MR. KELLOCK: Yes, my lord, of the Dominion Woollens and Worsteds:

"The Orillia mill provduces fine weaving yarn for use in other plants of this company and some weaving yarns for sale. The value of weaving yarn used in other plants is transferred at cost, no administration selling expenses, or profit is included in this cost. The tariff item under which it operates is 55la, with a duty rate of:

ad valorem	10%
Specific	7½%
both less	10%

This duty rate was established in 1930."

Then I point out that from 1928 to 1930 weaving yarn was duty free from Great Britain.

Then I refer to the report of the Tariff Board with regard to item 55la:

"The Board is satisfied from the evidence that, on the basis of prices current at the beginning of 1935, the existing compound duty is less than sufficient to equalize the costs of British and Canadian spinners producing worsted yarn for sale to weavers, except on coarser counts of white yarn used in weaving.

A trade survey covering the year 1933 indicates that about one half of the worsted weaving yarns used in Canada during the year were imported from Great Britain."

"On the other hand, the bulk of the yarn made by Patons and Baldwins Ltd. is hand knitting yarn, mainly balled yarns sold in boxes under valuable brand names, and if imported would enter under item 551 as already set out."

And my friend at page 386 deals with attempt at price stabilization of certain types of cloth out of a great variety produced in the industry. The situation in regard to this I have dealt with in my Factum, and it was six of these mills that took part in this price stabilization.

In regard to these six mills Mr. Howson's report I say:

"...unfortunately, does not allow a complete analysis of their operations to be reviewed. The only figures for profits available are those shown on page 5 of Exhibit 1017, and these 'profits' are before bond interests or income tax. The actual net profit would, of course, be lower than that shown on page 5 of Exhibit 1017. A comparison of the Sales and profit before bond interest or income tax for these six mills follows:"

In 1931 on sales of $6,109,314 they had a loss of

A trade survey covering the year 1938 indicates that about one half of the rotated seeding yarns used in Canada during the year were imported from Great Britain."

"On the other hand, the bulk of the yarn made by Forest Mill Limited. In fact nothing more, mainly bulked yarns sold in boxes under valuable brands, and if imported would enter under [illegible]."

And my friend it goes this deals with average at price equilibration of certain types of cloth out of a given variety produced in the industry. The situation in regard to this I have dealt with in my [illegible], and it was six of these mills that took part in this price stabilization.

In regard to these six mills Mr. Bonner's report [illegible]

"...unfortunately, does not allow a complete analysis of their operations to be revealed. The only figures for profits available are those shown on page 5 of Exhibit 1017, and these 'relate' to yarns and fabrics [illegible] The second net profit would, of course, be lower than that shown on page 5 of Exhibit 1017. A comparison of the sales and profit before bond interest or income tax for these six mills follows:"

In 1931 on sales of $6,109,314 they had a loss of

$486,851. In 1932 on sales of $6,358,018.12 they had a loss of $108,876.00. In 1933 on sales of 6,961,612. they had a profit of $14,207. In 1934 on sales of $7,618,914. they had a profit of $89,756. In 1935 on sales of $7,636,493, they had a loss of $175,382. And their total experience in these years on sales of over $34,000,000 was a loss of $667,145. That is a loss of 1.9¢ per dollar of sales before providing for bond interest or income tax.

The revenue obtained for losses are set out by companies, and I have done that in detail in attached statement "B" that I won't read at length, my lord.

Then I deal with these companies individually:

"Barrymore Cloth Co.: This company shows a declining revenue from operations before bond interest and income tax over the years 1931 to 1935, with a revenue in 1933 of only $2,337.62 before bond interest and income tax on the sales of $1,409,803.02 worth of cloth, and losses in 1934 and 1935 of $9,187.72 and $843.38 respectively on sales of $1,362,792.84 in 1934 and $1,352,511.56 in 1935."

And I submit there is no undue profit or even a fair return there.

In the case of Dominion Woollens and Worsteds:

"The financial returns of this company have already been discussed, and all that it is necessary to say is that in only one of the five years in the period 1931 to 1935, that is, in 1934, was there

[illegible]. In 1923 on sales of $2,250,016.12 they had a loss of $[illegible],271.[illegible]. In 1924 on sales of $[illegible],[illegible] they had a profit of $14,807. In 1925 on sales of $7,616,916, they had a profit of $[illegible],706. In 1926 on sales of $7,386,445, they had a loss of $[illegible],3[illegible]. And their total experience in these years on sales of over $24,000,000 was a loss of $887,146. That is a loss of 1.4% per dollar of sales before providing for bond interest or income tax.

The revenue obtained for losses are set out by companies, and I have done that in overall in a tabulated statement "E" that I won't read at length, my lord.

Then I deal with these companies individually:

"Waterproof Cloth Co.: This company shows a declining revenue from operations before bond interest and income tax over the years 1921 to 1926, with a revenue in 1928 of only $4,387.82 before bond interest and income tax on the sales of $1,400,000.00 worth of cloth, and losses in 1924 and 1925 of $9,187.72 and $842.38 respectively on sales of $1,382,708.04 in 1924 and $1,008,[illegible].00 in 1925." And I submit there is no undue profit or even a fair return there.

an operating revenue surplus. This was $25,341, (before bond interest) on sales of $3,574,594."

Then I point out an inaccuracy in the exhibit which I have already referred to in my main Factum - that is, in connection with the deduction of some part of depreciation twice over some of the years dealt with there, and the opinion expressed as to the over - staffing of the various mills is also denied - that is Mr. Evans' charge - it is denied in the company's reply, and the company's reply shows that the Hespeler Mill is more economically operated under the present management than under the former owners.

The Dupont Textiles Limited:

"This Company was in the red in 1931 and 1932 on a combined sales in the two years of $751,103, in 1933 had a revenue from operations of $14,410, before bond interest and income tax on sales of $460,920, and in 1934 and 1935 had small operating returns before income tax which did not amount in either year to 1% of sales."

And Hield Brothers was in the red for three years out of the 5-year period.

The Paton Manufacturing Company:

"This company was the most steady earner of the lot. It will be noted that the operating revenue (before income tax and bond interest) for this company declined from $131,616 until it was

Then I point out an inaccuracy in the exhibit which I have already referred to in my main motion - that is in connection with the reduction of some part of depreciation sales over note of the years 1921 and 1922, and the opinion expressed as to the overvalling of the various mills is also denied - that is Mr. Evans' charge - it is denied in the company's reply, and the company's reply shows that the regular mill is more economically operated under the present management than under the former management.

The Sunset Mailing Plants:

This Company was in the red in 1921 and 1922 on a combined sales in the two years of $721,100, in 1923 had a revenue from operations of $14,410, before bond interest and income tax on sales of $460,980, and in 1924 and 1925 had small operating returns before income tax which did not amount in either year to 1% of sales.

And Field Brothers was in the red for three years out of the 5-year period.

The Dutch Manufacturing Company:

Which Company has the most steady earner of the lot. It will be noted that the operating revenue varying limited from $221,000 and only if

$40,275, in 1935. And the evidence is that this company was not able to put aside its proper depreciation out of these earnings; that is, the figures given are before full depreciation. The net profits of this company, including miscellaneous income, and not including full depreciation to sales was in 1932, 7%. 1933, 5%. 1934, 4.3%. 1935, 0.2%, and 1936, 5.9%, the average being 5%."

The St. Johns Textile Mills Limited, was in the red in 1931, 1932, 1933, and 1935 and in 1934 had a revenue from operations of $459 on a sale of $686,607 worth of goods.

Now, the result of the five mills, eliminating Dominion Woollens from the picture for the moment, is that in 1931 on sales of $3,454,661 it had a revenue before bond interest and income tax of $132,122 or 4 3.8% to sales. In 1932 on sales of $3,467,638 it had a revenue before bond interest and income tax of $94,194 or 2.7% to sales.

In 1933 on sales of $4,155,870 it had a revenue before bond interest and income tax of $178,883, or 4.3% to sales. In 1934 on sales of $4,044,320, it had a revenue before bond interest and income tax of $64,414, or 1.6% to sales. In 1935 on sales of $4,549,030 it had a revenue before bond interest and income tax of $57,022 or 1.3% to sales.

the net profits of this company, including miscellaneous income, and not including full depreciation to sales was in 1926, 7%, 1928, 3%, 1924, 4.5%, 1930, 0.8%, and 1926, 8.8%, the average being 5%."

The Ky. Power & Light Company, was in the red in 1921, 1922, 1923, and 1925 and in 1924 had a revenue from operations of $[illegible] on a sale of $[illegible] worth of goods.

Now, the result of the five mills, eliminating Dominion holdings from the figures for the company, is such in 1931 on sales of $[illegible] it had a revenue before bond interest and income tax of $[illegible] or 4.3% to sales. In 1930 on sales of $3,407,338 it had a revenue before bond interest and income tax of $[illegible] or 2.7% to sales.

In 1929 on sales of $4,[illegible],070 it had a revenue before bond interest and income tax of $[illegible], or 4.5% to sales. In 1928 on sales of $4,[illegible],320, it had a revenue before bond interest and income tax of $[illegible], or 1.0% to sales. In 1927 on sales of $4,[illegible],030 it had a revenue before bond interest and income tax of $[illegible] or 1.[illegible]% to sales.

With regard to 1933:

"It will be noted on examination of the wool chart filed with the Commission that in 1933, wool tops which for 60's quality were 21/22 pence per lb. in January of that year rose abruptly throughout the year until they were 40d in December. As the years shown are not calendar years but the fiscal years of the various companies, ending at any time in the year, it is difficult to co-relate raw material movements to returns, but it is submitted that such movements affect earnings."

And it is submitted that an examination of these six companies either separately, as a group of six, or in a group of five, shows no indication whatever that any undue profits were made in any of the years that were in question.

Then, my lord, I deal with the "Real Silk Division" shortly. There is no question about price arrangements here but I think I should analyse the situation from the shareholders' standpoint.

In Exhibit 916 the Auditor sets out the affairs of the Real Silk Division, starting in 1926 and 1927 with six companies and finishing the period with sixteen companies in 1934 and 1935, and then there is the question of the inclusion of the Belding-Corticelli Company, the production of which company is not comparable to the production of the other companies, as it

"It will be noted on examination of the wool chart filed with the Commission that in 1935, wool tops which for 60's quality were 81/2d pence per lb. in January of that year rose sharply throughout the year until they were 46d in December.

As the years shown are not calendar years but the fiscal years of the various companies,

ending at any time in the year, it is difficult to co-relate raw material movements to returns, but it is submitted that such movements affect earnings,

and it is submitted that an examination of these six companies either separately, as a group of six, or in a group of five, shows no indication whatever that any undue profits were made in any of the years that were in question.

Then, my lord, I deal with the "Real Silk Division" shortly. There is no question about =price extravagances here but I think I should analyze the situation from the Commissioners' standpoint.

In Exhibit 918 the Auditor sets out the affairs of the Real Silk Division, starting in 1934 and 1935 with six companies and finishing the period with sixteen companies in 1936 and 1937, and then there is the question of the inclusion of the selling-controlling company, the profitability of which company is not shown in the preceding of the latest year-end, as it

does not manufacture broad silk at all but makes threads, twists, narrow fabrics and ribbons, shoe laces and full fashioned hosiery, and it has a selling organization selling directly to the retail trade. Its expense as a selling company is accordingly much higher.

"In considering the financial report of the Broad Silk Division, it should be remembered that in the period 1930 to 1932 four mills went out of business, that is, the Niagara Silk Company, The Dover Silks Limited, E.& J. Silk Company Limited, and the Brupbacker Silk Mills Limited, ---"

MR. McRUER: How long had the Dover Silk Mills been in business? I remember reading some correspondence on them. They wanted to make some casket cloth and they wanted a special valuation put on that class of cloth. Then they went out of business notwithstanding they had this special valuation on the casket cloth.

MR. KELLOCK: Unless you know a good deal more about it than that I doubt very much ---

THE COMMISSIONER: Is there any evidence about that company?

MR. KELLOCK: As to how long it was in operation? That same exhibit will show, will it not? I am told it was considered a good mill. I don't know that it was one of the larger mills. It was a small mill.

THE COMMISSIONER: Where was it?

MR. KELLOCK: At Port Dover, headquarters in Brantford.

does not manufacture broad silk at all but makes trimmings, belts, narrow fabrics and ribbons, also lace and full fashioned hosiery, and it has a selling organization selling directly to the retail trade. Its expense as a selling company is accordingly much higher.

In considering the financial report of the broad silk division, it should be remembered that in the period 1920 to 1925 four mills went out of business, namely, the Dexter Silk Company, the Power Silk Limited, W.H.S. Silk Company Limited, and the Brookmont Silk Mills Limited. ---

Mr. MOLLOY: How long had the lower silk mills been in business? I remember reading some correspondence on them. They wanted to make some cheaper cloth and they wanted a special valuation put on their plans of cloth. Is they been out of business considering they had this special valuation on the cheaper cloth.

Mr. LYNCH: Unless you know a good deal more about it than I do I doubt very much ---

THE COURT: Is there any evidence about the company?

Mr. MOLLOY: As to how long it was in operation? The same exhibit will show, will it not? I am trying to see whether a good deal of the loss was due to the fact that it was one of the larger mills. It was a small mill.

THE COURT: Where was it?

Mr. MOLLOY: Mr. Perry, Manchester, Connecticut.

MR. McRUER: It was a good mill, they were operating profitably, were they, before 1930 and then became unprofitable afterwards?

MR. HALLAM: I would have to check back on the figures

MR. McRUER: I read correspondence with the Customs Department and they got special valuation to cover one particular cloth they manufactured and I wondered how they went out of business after they got that.

MR. KELLOCK: They did not get enough.

MR. McRUER: No, there is no complaint that they did not get all they asked for.

MR. KELLOCK: Well, they are gone anyway. I do not suppose if they were operating a bonanza they would not have gone out of business.

"The production of artificial silk fabrics is becoming more and more the largest factor in the production of the mills weaving broad silks. The following figures include the production of the Broad Silk Group together with the production of Celanese Limited, but not the production of the Cotton companies."

And your lordship sees that Real Silk in yards in 1931 was 8,657,612 yards. It went up to some extent by 1932 but it got back by 1934 to below what it had been, while Artificial silks there is a steadily a large increase year by year. In Real silk mixtures there is an increase until 1933 and

then there is a falling off again in 1934. The Artificial Silk mixtures there is a fairly constant figure from 1931 to 1933 and then an increase in 1934. And then ---

THE COMMISSIONER: It would look here as though this Artificial silk was displacing something else, not so much real silk. You take the total figures for instance of 1934, and 1931, and compare them. You have about 14,000,000 in 1931 and you have about 35,000,000 or 36,000,000 in 1934, whereas Real silk is just about the same. So that it is encroaching on cotton.

MR. KELLOCK: Taking the cotton business.

THE COMMISSIONER: More than that of silk. Real silk is just about where it was - I mean in 1934; I don't know where it is to-day - just about the same as it was in 1931 whereas artificial silk had gone away up to over 20,000,000, so that it must have been at the expense of some other fabric and I would suppose cotton.

MR. McRUER: Have we the figures available of the production in 1935 and 1936?

MAJOR HALLAM: I think they are just coming out.

MR. BERRY: The 1935 figures are all out.

THE COMMISSIONER: It would be interesting to know what has gone on since 1934. You could get us that?

MR. McRUER: Yes, I think we have them. Does this include Celanese products?

then there is a falling off again in 1934. The artificial silk consumption is a rather amazing figure from 1931 to 1935 and then an increase in 1934 and then ---

THE CHAIRMAN: It would look more as though this artificial silk was displacing some thing else, not so much real silk. You take the total figures for insurance of 1934, and 1931, and compare them. You have about 16,000,000 in 1931 and you have about 35,000,000 or 36,000,000 in 1934, whereas real silk is just about the same. So that it is exchanging on cotton.

MR. ESSLEMONT: Taking the cotton business.

THE CHAIRMAN: More than most of silk. Real silk is just about where it was - I mean in 1934. I don't know where it is to-day - just about the same as it was in 1931 whereas artificial silk had gone away up to over 20,000,000, so that it must have been at the expense of some other fabric and I would suppose cotton.

MR. MONDS: Have we the figures available of the production in 1935 and 1936?

MAJOR HAILAM: I think they are just coming out.

MR. MONDS: The 1935 figures are all out.

[illegible] I think so have them. Does anybody [illegible]

MR. KELLOCK: Says so. I am told also that the increasing use of Artificial silk results in the wearing of more customes - that is, that people will wear about three Artificial silk dresses where they perhaps wore only one silk dress before.

MR. McRUER: That is a very strong argument for the lower prices.

MR. KELLOCK: The prices are very much lower.

THE COMMISSIONER: You mean the same lady now would have three dresses instead of one?

MR. McRUER: Yes. They have three times as many clerks in the retail stores.

MR. KELLOCK: That is at the expense of the silk mills and they have got to switch over apparently, and it was stated in evidence ---

MR. McRUER: Oh, the figure in Exhibit 888 for the production of artificial silk by Canadian mills shows for 1935 29,530,000 yards.

THE COMMISSIONER: That is a big increase over 1934, you see.

MR. McRUER: And this shows for 1934, 22,057,000 yards. Then the figure for the first six months of 1936 is16,065,000 yards, so that would be a big increase again if that was maintained in the last six months.

THE COMMISSIONER: Have you the Real silk there too?

MR. McRUER: No.

MR. KELLOCK: My lord, I think I have it here and

MR. MORRIS: I am told also that the use of artificial silk results in the wearing of more underwear - that is, that people will wear more artificial silk dresses where they perhaps wore only one silk dress before.

MR. MORRIS: That is a very strong argument for the [illegible].

MR. [illegible]: [illegible].

THE COMMISSIONER: You mean the more I had now would have three dresses instead of one?

MR. MORRIS: Yes. They have three times as many clothes in the result stores.

MR. [illegible]: Just in at the outbreak of the silk mills are they have got to switch over apparently, and it was stated in evidence ---

MR. MORRIS: Oh, the figure in question for the production of artificial silk by American mills stood for 1929 to 34,380,000 yards.

THE COMMISSIONER: That is a big increase over [illegible], yes.

MR. MORRIS: And this shows for 1934, 42,027,000 yards. Then the figure for the first six months of [illegible], [illegible], so that [illegible] is not [illegible] months.

THE COMMISSIONER: Have you that silk [illegible]?

MR. MORRIS: No.

THE COMMISSIONER: No [illegible], I think I have it here and

I have the comparable figures to the figures in my Factum. Apparently the figure my learned friend has just given your lordship must include something else. Now, real silk in 1935, the figure is 9,983,397.

THE COMMISSIONER: What are these - square yards?

MR. KELLOCK: Yards, my lord.

MAJOR HALLAM: Lineal yards.

THE COMMISSIONER: That is an increase over 1934.

MR. KELLOCK: Yes. The Artificial silk is 25,313,896.

THE COMMISSIONER: There is that big increase in artificial silk, with an increase, apparently a substantial one, in real silk. So that some other material must be suffering. What about 1936?

MR. KELLOCK: I have not got that.

MR. HOOPER: I have written for it.

MR. KELLOCK: Well then, real and artificial silk mixed, carrying it down, in 1935 ---

THE COMMISSIONER: You have one year real silk mixed and then you have artificial silk mixed, - that apparently would mean real silk mixed with cotton.

MR. KELLOCK: No, it is the real silk mixed, in my Factum, the mixture is real and artificial silk.

THE COMMISSIONER: What would the other one mean?

MR. KELLOCK: The other is artificial silk and cotton, and if yourlordship would like those figures, the first one , real and artificial silk mixed in 1935 $2,329,000 which is quite a falling off - the figure

I have the comparable figures to the figures in my [illegible]. Specifically the figure my learned friend has just given your lordship must include something else, for, real silk in 1943, the figure is 2,983,327.

MR. KELLOCK: Yards, my lord.

[illegible] Lord Wright.

MR. KELLOCK: Yes. The artificial silk is 20,216,996.

THE COMMISSIONER: There is that big increase in artificial silk, with an increase, apparently a substantial one, in real silk. So that some other [illegible] must be underlying. And about rayon?

MR. F. LOGAN: I have not got that.

[illegible]

MR. KELLOCK: Well then, real and artificial silk mixed, carrying it down, in 1948 ---

THE COMMISSIONER: You have one year real silk mixed and then you have artificial silk mixed, - that [illegible] [illegible] silk alone [illegible].

MR. KELLOCK: No, it is the real silk mixed, in my feeling, the difference is real and artificial silk.

THE COMMISSIONER: What would the other one mean?

MR. KELLOCK: The other is artificial silk and cotton, and if yourlordship would line those figures, [illegible], real and artificial [illegible] [illegible] - the figure

should be in yards, 4,114,471 and artificial silk and cotton mixed, 990,224.

THE COMMISSIONER: Not much change.

MR. KELLOCK: No, my lord.

"It was stated in evidence thatartificial silk fabrics now represent approximately 75% of the production of the broad silk mills.

It is submitted that the bulk of the production of the broad silk mills is high style fabrics for women, in the production of which in this or any other country, there must be a very substantial profit to cover the risks of operating."

THE COMMISSIONER: Well, we will adjourn now.

--

-- The Commission adjourned at 12.30 P.M. to resume at 2.30 P.M.

---

should be in yards, 4,114,471 and artificial silk and cotton blend, 171,000.

THE COMMISSIONER: Not much change.

MR. MILLICEN: No, my Lord.

It was stated in evidence that artificial silk fabrics now represent approximately 70% of the production of the broad silk mills.

It is established that the bulk of the production of the broad silk mills is high style fabrics for women, in the production of which the mills of any other country, there must be a very substantial profit to cover the risks of creation.

THE COMMISSIONER: Well, we will adjourn now.

-- The Commission adjourned at 12.57 p.m. to resume at 2.00 p.m.

-- The Commission resumed at 2.30 p.m.

Mr. KELLOCK: I was dealing with the real silk division at the top of page 2, showing what the companies actually made--that is, the reporting companies.

"In the available sample submitted by commission counsel the net profit as a percentage of the shareholders' equity in each year is as follows:

1926	7.7 %
1927	9.8 %
1928	11.9 %
1929	12.8 %
1930	4.9 %
1931	4.6 %
1932	3.9 %
1933	7.6 %
1934	7.3 %
1935	7.5 %
Average 10 years	7.6 %

Factum, Section D
(statement 3, p. 2.)

Average 1926-1930	9.4 %
Average 1931-1935	6.3 %

Commission Counsel points out that the broad silk industry in Canada dates from about 1923. It is submitted that the companies in this field are subject to the greater risk inherent in any new enterprise. One such company went out of business in 1930, one in

— The Commission resumed at 9.30 p.m.

Mr. WALDOCK: I was dealing with the road site situation at the top of page 6, showing that the companies actually made--that is, the recorded companies.

In the available sample submitted by counsel for the net profit as a percentage of the shareholders' equity in each year is as follows:

1981	7.7 %
1982	[illegible]
1983	12.1 %
1984	[illegible]
1985	4.0 %
1986	4.0 %
1987	[illegible]
1988	[illegible]
1989	[illegible]
1994	7.5 %
1995	7.5 %
Average 10 years	7.5 %

Brown, Section B
(statement 5, p. 2.)

average 1955-1960 5.4 %

average 1961-1965 6.5 %

Commission Counsel points out that the broad milk industry in Canada dates from about 1920. It is submitted that the companies in this field had reduced by the operative rate of interest in any new enterprise. One may [illegible]

"1931 and two in 1932, but these are not included in any of the figures submitted by Commission Counsel. In Exhibit 916, page 5, it will be seen that of the companies reported on, in 1931 seven of these companies showed a revenue before bond interest and income tax and five companies showed a loss. In 1932 six companies had a revenue from operations before bond interest and income tax, while six companies showed a loss. In 1933, ten companies had an operating revenue before bond interest and income tax and five companies suffered a loss."

The COMMISSIONER: You keep on using the word revenue when you mean gross profit ?

Mr. KELLOCK: Yes, My Lord.

"The sales and net profits (including miscellaneous income) after bond interest and income tax for all companies in the available sample are detailed below:

	Sales (Exhibit 916)	Net Profit (Exhibit 1222)	%
1926	$ 5,996,210.72	$ 337,495.85	5.6
1927	6,812,786.22	451,746.14	6.6
1928	7,633,185.92	616,251.47	8.1
1929	8,989,635.26	751,710.48	8.4
1930	9,234,223.38	283,511.31	3.1
1931	10,403,475.41	315,907.87	3.0
1932	10,382,782.02	269,935.63	2.6
1933	11,074,982.42	566,429.88	5.1
1934	12,534,866.56	624,967.46	5.0

"1931 and two in 1932, but these are not known in any of the figures submitted by Commission counsel. In Exhibit 210, page 5, it will be seen that of the companies reported on, in 1931 seven of these companies showed a revenue before bond interest and income tax and five companies showed a loss. In 1932 six companies had a revenue from operations before bond interest and income tax, while six companies showed a loss. In 1933, ten companies had an operating revenue before bond interest and income tax and five companies suffered a loss."

The COMMISSIONER: You keep on using the word revenue when you mean gross profit?

Mr. WILLSON: Yes, my lord.

"The sales and net profits (including miscellaneous income) after bond interest and income tax for all companies in the available series are detailed below:

	sales (Exhibit 210)	net profit (Exhibit 1932)	%
1926	$ 8,900,210.72	$ 587,495.85	6.6
1927	4,012,[illegible]	[illegible]	[illegible]
1928	[illegible]	[illegible]	[illegible]
1929	[illegible]	[illegible]	[illegible]
1930	9,804,804.38	[illegible]	[illegible]
1931	[illegible]	[illegible]	[illegible]
1932	10,382,382.03	889,985.65	8.6
1933	11,[illegible]	[illegible]	[illegible]
1934	12,981,[illegible]	[illegible]	6.0

1935	12,167,087.39	611,877.00	5.0
	$95,229,235.30	$4,829,833.09	5.1"

For the years 1926 to 1929 the average is 7.3; for the years ~~1925~~ 1930-1933, the average is 3.5; for the years 1934-35, the average is 5.0.

"The narrowing margin which this industry had out of every dollar of sales to provide a return on the shareholders' investment is noticeable.

The Commission Auditor in Exhibit 916 summarizes the sales, profits, dividends, etc. for the "representative" companies over the ten year period. This statement (page 10, amended) shows a net profit of 6.0 per cent of sales for these representative companies. All companies in the available sample, however, were only able to show a net profit of 5.1 per cent of sales, indicating that the so-called representative companies were considerably more profitable than the average of the group. That is, that the so-called representative sample was not representative.

The following summary from Exhibits 916 and 1222 shows what happened in the ten year period, 1926 to 1935 inclusive, to the companies in the available sample, the so-called representative sample, and the companies which the commission auditor excluded from the representative sample.

For the years 1926 to 1929 the average is 7.0;
for the years 1930-1934, the average is 6.9;
for the years 1935-39, the average is 5.0.

The narrowing margin which this inventory had cut of every dollar of sales/proceeds is a living [illegible] [illegible] [illegible] [illegible].

The Commission Auditor in Exhibit 216 summarizes the sales, profits, dividends, etc. for the "representative" companies over the ten year period. This statement (page 10, succeed) shows a net profit of 6.0 per cent of sales for these representative companies. [illegible] companies in the available sample, however, were only able to show a net profit of 5.1 per cent of sales, indicating that the so-called representative companies were comparatively more profitable than the average of the group. That is, that the so-called representative sample was not representative.

The following summary from Exhibits 216 and 1212 shows what happened in the ten year period, 1928 to 1938 inclusive, to the companies in the available sample, the so-called representative sample, and the companies which the [illegible] [illegible] [illegible] [illegible] [illegible].

This is the one group in which Mr. Howson said that these representative companies were successful; I can put my hand on that evidence is necessary.

	Sales	Net Profit	% of Sales
Available sample	$95,229,235.30	$4,829,833.09	5.1
"Representative" sample	84,039,815.79	5,017,003.45	6.0
Excluded companies	11,189,419.51	187,170.36	1.7

Red

The statement showing the summary of operations for the ten years of the "representative" companies also shows that of the $5,017,003.45 net profits available as a return to shareholders on their capital investment only $2,662,275.92--or slightly more than half --was distributed in dividends. The balance was left in the business to provide additional plant and the increased working capital needed by a growing industry. While this profit left in the business accrues to the shareholders and increases his equity accordingly, its realisation is entirely dependent upon the continued ability of the business to operate at a profit. A silk mill that cannot produce silk yarns or fabrics which can be sold at a profit is worth nothing more than its scrap value.

In the general return for the industry the first year's operations of the associated textiles is not included in any of the statements, so that the loss of this company in the first

the statement showing the summary of operations for the ten years of the "Transportative" companies also shows that of the $5,017,000.40 net profits available as a return to stockholders on their original investment only $4,984,878.98--or slightly more than half--was distributed in dividends. The balance was left in the business to provide additional plant and the increased working capital needed by a growing company. While this profit left in the business necessarily increases the equity accordingly, the situation is entirely dependent upon the continued ability of the business to operate at a profit. Milk mill that cannot produce only cream or products which can be sold at a profit is worth nothing more than its salvage value.

"year of their operation was not reflected in the commission auditor's reports."

In the exhibit dealing with the Associated Textiles, that company had a loss of approximately $60,000,as I recall, for the first year of its operations, and Mr. Howson starts in at the end of that period with that exhibit, and that loss is not reflected in any way in the figures pertaining to that company in that exhibit.

"In all the reports on this division of the industry, either as to individual companies or companies grouped together, the only company where net profit is shown is in the case of Associated Textiles Limited, page 1, Exhibit 907. In all other cases the so-called "net profit" figure used is a trading revenue, exclusive of miscellaneous income, and before bond interest and income taxes. In two cases it is also before interest on bank and other loans."

With regard to the Associated Textiles, that may be an accident, because Associated Textiles had no bonds outstanding and no bank loans.

Mr. McRUER: That is an illustration of the soundness of our calculations.

Mr. KELLOCK:

"It is submitted that when all the figures are correctly considered the return on capital has not been excessive at any time."

"year of their operation was not reflected in the commission auditor's report."

In the exhibit dealing with the associated facilities, that company had a loss of approximately $80,000,as I recall. For the first year of the operations, and Mr. Dawson states in at the end of that period with that exhibit, and that loss is not reflected in any way in the figures pertaining to company in that exhibit.

"In all the reports on this division of the industry, either as to individual companies or companies grouped together, the only company where net profit is shown is in the case of Associated Services Limited, page 1, exhibit 507. In all other cases the so-called 'net profit' figure used is a trading revenue, exclusive of miscellaneous income, and before some interest and income taxes. In the cases it is also before interest on bank and other loans."

[illegible] may be an accident, because Associated Services had no bonds outstanding and no bank loans.

Mr. [illegible]: That is an illustration of the [illegible].

Mr. [illegible]:

"It is submitted that when all the figures are correctly considered the winner or winners [illegible] [illegible]."

Now I come to the carpet division.

"In setting up Exhibit 1191 dealing with the carpet division on page 2, the Commission Auditor sets up a table called "Profit and Loss and Surplus Summary." This summary purports to deal with the affairs of two companies in 1926 and 1927, three companies in 1928 and 1929, four companies in 1930, 1931 and 1932, and five companies in 1933, 1934 and 1935. But if the figures on page 2 are tied back into the table on page 3, it will be seen that only four companies are reported in the years 1933, 1934 and 1935.

On page 3, the term "total net profit" is used for a set of figures which ties back into page 2, where the same figures are described also as "total net profit." On page 2, the "total net profit" is the sum of two amounts which are shown as "net profit from operations" and "miscellaneous income." It will be seen that on page 2 bond interest and income tax have not been deducted before arriving at the so-called "total net profit". The tables shown on page 3, which purport to be the "ratio total net profit to sales", are neither net profit to sales nor operating revenue to sales, because

(a) There is no net profit until bond interest and income tax are deducted from operating revenue.

[illegible] more to the output division.

"In setting up monthly [illegible] dealing with the output division on page [illegible], the [illegible] author sets up a table as [illegible] 'Monthly [illegible] and [illegible] [illegible].' The summary [illegible] that with [illegible] of the [illegible] in 1929 and 1927. These [illegible] in 1928 and 1926, [illegible] [illegible] in 1928, and [illegible] 1926. But if the figures on page 4 are [illegible] from the table on page 6, it will be seen that [illegible] [illegible] in the years 1926, 1928 and [illegible].

On page 6, the term 'total net profit' is used for a set of figures which [illegible] [illegible] 3, where the [illegible] figures are described [illegible] as 'total net profit.' On page 3, the [illegible] 'net profit' is the sum of two [illegible] which are shown as 'net profit from operations' and 'miscellaneous income.' It will be seen that on page 3 bond interest and income tax were not been deducted before arriving at the [illegible] 'total net profit'. The table shown on page 6, which appears to be the 'table based net profit to sales', uses neither net profit to sales nor operating revenue to sales, because

(a) There is no net profit until bond interest and income tax are deducted from

[illegible]

"(b) The figure called "total net profits" is not operating revenue applicable to sales because it has added to it miscellaneous revenue.

For the four companies reported on in Exhibit 1191 the net profits available to shareholders expressed as a percentage of the shareholders' equity for the ten year period are set out below:

1926	6.1 %
1927	8.1 %
1928	6.3 %
1929	7.7 %
1930	5.5 %
1931	3.6 %
1932	0.8 %
1933	1.5 %
1934	2.8 %
1935	2.8 %
(Average 10 years	4.3 %)
(Average 1926-1930	6.7 %)
Average 1931-1935	2.3 % "

I submit that these are very low profits particularlyin the period 1931-1935.

"Exhibit 1191 (last page) shows the net profit for these ten companies for the ten years 1926 to 1935 was 7.2 per cent of sales, and this included miscellaneous income amounting to 3.6 per cent of sales.

"In considering the profits of this division the variation in the amount of depreciation provided must be taken into consideration; thus the Harding Carpet Company (Exhibit 1184, p.2) is shown not to have allowed for any depreciation in the years 1928, 1930, 1931 and 1932. Because it will be seen on this statement that the "gross profit before depreciation" is the same as the "gross profit after depreciation", similarly in the case of the Toronto Carpet Company in 1931 and 1932 (Exhibit 1184, p.3) and the Brinton-Peterborough Company, Limited, (Exhibit 1184, p.1) in 1933, it will be seen made no provision for depreciation."

Mr. McRUER: The Harding Company was a new company.

Mr. KELLOCK: That is all right; I am merely saying that the figures are exclusive of depreciation.

Mr. McRUER: Are you suggesting that there should be a tariff to look after every new company set up ?

Mr. KELLOCK: I have always understood that the moment you started operations depreciation began.

Mr. McRUER: Should there be a tariff for every new company that wants to start up to see that it gets a profit ?

Mr. KELLOCK: The brief continues:

"This, of course, results in making the net profits of these companies appear greater than they actually are, because depreciation

"In considering the case of a [illegible] the variation in the amount of [illegible] provided must be taken into consideration; [illegible] is shown not to have allowed for any [illegible] in the years [illegible], [illegible] and [illegible]. Because it will be seen on this statement that the "gross profit before depreciation" is the same as the "gross profit after depreciation" similarly in the case of the [illegible] company in [illegible] and [illegible] and the [illegible] company, [illegible] [illegible], p.3) in [illegible], it will be seen made no provision for depreciation.

Mr. [illegible]: The [illegible] company [illegible] company.

Mr. [illegible]: Just in all right; I am [illegible] saying that the figures are conclusive of [illegible].

Mr. [illegible]: Are you suggesting that there should be a profit to [illegible] every [illegible] company set up?

Mr. [illegible]: I have always understood that the [illegible] you attached [illegible] approximation [illegible].

Mr. [illegible]: [illegible] be a benefit for every [illegible] company that wants to [illegible] to see that it [illegible] a profit?

Mr. [illegible]: The [illegible] continues.

"This, of course, results in making the net profits of these companies appear greater than they actually are, because depreciation

"is a proper charge in any year.

From Exhibit 1184, page 2, it will be seen that the Harding Carpet Company, in the period 1928 to 1933, never paid a cent in dividends on their preferred stock. The dividend requirements on these shares amounted to $52,500 per year."

Again we have the same error in the exhibit.

Mr. McRUER: Their stock was re-allotted. They refinanced the company and the preferred stockholders and common stock holders were given another class of stock instead.

The COMMISSIONER: On an equal standing ?

Mr. McRUER: Yes.

The COMMISSIONER: The preferred stock was wiped out ?

Mr. McRUER: Yes, they were given common shares of no par value for the preferred and common stock.

Mr. KELLOCK: The preferred cumulative shares were outstanding and dividends on the preferred stock were not paid.

Mr. McRUER: You do not mention the fact that they recapitalized and are now paying dividends on common stock.

The COMMISSIONER: When did they recapitalize ?

Mr. McRUER: About 1932.

The COMMISSIONER: And they are now paying dividends?

Mr. McRUER: Yes, on their common stock. Their common stock is selling about $6 on the market.

"Is a typed copies it may have.

Here Plaintiff's Exhibit 1724, page 3, it will be seen that the leading target company, in the period 1922 to 1932, never paid a cent in dividends on their preferred stock. The dividend requirements on these shares amounted to $27,700,000 approximately.

Again we have the same error in the [illegible].

Mr. [illegible]: Well we [illegible]. Although reorganized the company and the preferred dividends and common stock holders were given another share of stock instead.

The [illegible]: Is an equal exchange ?

Mr. [illegible]: Yes.

The [illegible]: The preferred stock was [illegible] ?

Mr. [illegible]: Yes, they were given common shares of no par value for the preferred and common stock.

Mr. [illegible]: The preferred cumulative sinking outstanding and dividends on the preferred stock were not paid.

Mr. [illegible]: You do not question the fact that the money [illegible] and are now paying dividends on common stock.

The [illegible]: Does the [illegible] ?

Mr. [illegible]: [illegible].

The [illegible]: Does the [illegible] Exhibit 1724, on Merit Common Stock. [illegible] [illegible] to [illegible] on the [illegible].

I happen to know something about this stock.

Mr. KELLOCK: With regard to carpets, as shown by table B, the last table in my brief there was $750,000 outstanding preferred shares until 1933 and thereafter these shares disappeared. What I am dealing with on page 2 of the carpet division is the story up to 1933, and I am pointing out that there is an error in this exhibit similar to the other, and it makes a considerable difference because instead of there being a return on common stock equity in 1929 of 12.6 it was 18.0 in the red. In 1930 instead of 10 per cent of a return it was 17.5 in the red and in 1933 instead of 0.2 it was 38.1 in the red.

Mr. McRUER: This is a company that operated on a large bank loan. They had $250,000 borrowed from the bank.

Mr. KELLOCK: Where does my friend get all his information ? It sounds as if he had a keen personal interest in it at one time.

Mr. McRUER: They capitalized the arrears of dividends. You and I do not calculate these things on the same basis anyhow.

Mr. KELLOCK:

"Similarly in the case of the Toronto Carpet Company, Limited, unpaid preferred dividends in the years 1933 to 1935 are ignored by the Commission Auditor in Exhibit 1184, page 3. These unpaid dividends amounted to:

1933	$ 58,240
1934	66,560
1935	66,560

On page 345 of his factum Commission Counsel commences to set out the attempts of four carpet companies to stabilize prices, i.e.

Toronto Carpet Co. Limited

Brinton-Peterboro Carpet Co. Ltd.

Hardings Carpets Limited

Guelph Carpet & Worsted Spinning Mills, Ltd.

The financial records of the three carpet companies (Toronto, Brinton and Harding) as derived from Exhibit 1191 are set out in table A attached for the period 1931 to 1935 inclusive. The sales and net profits of these three mills for the years 1931 to 1935 were as follows:

	Sales	Net Profit	
1931	$ 3,020,899.53	$ 197,047.05	
1932	2,034,442.98	110,947.04	
1933	1,559,404.94	60,212.00	
1934	2,177,315.98	138,038.18	
1935	2,444,316.83	146,469.07	6.0% of sales
	$11,236,380.26	$ 652,713.34	5.8% of sales

In considering these net profits however, it should be noted that they were largely earned from outside investments--the revenue from these sources being as follows:

1931	$ 118,037.27
1932	93,434.99

[illegible]

[illegible]	[illegible]
[illegible]	$ 23,240
[illegible]	[illegible]
[illegible]	[illegible]

[illegible] conference to set out the statistics of four [illegible] companies to aircraft unions, i.e.

Toronto Airport Co. Limited

[illegible]

Merrill & Toronto Limited

[illegible]

The financial results of the three [illegible] companies (Limited, Limited and Merrill) [illegible] as shown from Exhibit 1187 are set out in table [illegible] shown for the period 1947 to 1952 inclusive. The sales and net profits of these three [illegible] for the years 1947 to 1952 were as follows:

Year	Sales	Net profit
1947	[illegible]	[illegible]
1948	[illegible]	[illegible]
1949	1,[illegible],[illegible].04	[illegible].00
1950	[illegible]	[illegible]
1951	[illegible]	[illegible]
	$11,[illegible],[illegible].00	$ [illegible],[illegible].04

In considering these net profits however, it should be noted that they were largely [illegible] [illegible] revenue being as follows:

[illegible]	$ [illegible],[illegible].[illegible]
[illegible]	[illegible]

1933	71,540.45	
1934	59,846.52	
1935	33,475.85	2.4% of sales
	$378,335.08	3.4% of sales

It will be seen from the above that sales fell very rapidly from 1931 to 1933 and, but for the revenue from outside investments, there would have been a loss in the last mentioned year. Improvement is shown in 1934 and 1935, but even in 1935 the net profit is only 6.0 per cent of sales--and this is after including miscellaneous incomes which amounted to 2.4 per cent of sales. For the five year period the net profit is 5.8 per cent of sales, after including miscellaneous income which amounted to 3.4 per cent of sales.

The net profits (including miscellaneous income) of these three companies to shareholders equity is set out in the following comparative table:

		Brinton-Peterboro	Harding Carpets	Toronto Carpets
		Exhibit 1184 page 1. %	See table B. attchd. %	See table B attchd. %
Pre Depression	1926	6.8	-	5.9
	1927	8.7	-	8.0
	1928	9.1	0.7 Red	7.7
	1929	13.1	2.4	7.9
Depression	1930	4.3	2.0	6.9
	1931	5.9	0.6 Red	4.3

	1932	3.7	4.0 Red	1.2
	1933	0.7 Red	0.0	1.9
Recovery	1934	2.6	5.2	2.0
	1935	3.0	4.4	2.2 "

In the case of the Harding Company this does not take into consideration proper depreciation for which the company should have provided.

Mr. McRUER: Are they paying dividends without making provision for depreciation ?

Mr. KELLOCK: In 1934-35 the company did not pay dividends. In 1936 they paid the first dividend on common stock since organization in 1928.

The COMMISSIONER: What did they do with these profits ?

Mr. KELLOCK: In 1934-35 ?

The COMMISSIONER: Yes.

Mr. KELLOCK: Well, they hung on to them; they kept them.

Mr. McRUER: They reduced the amount of the bank loan ?

Mr. KELLOCK:

"The amount of miscellaneous income included in the net profits of these companies in the years 1931 to 1935 is shown on Table A attached. For the three companies the totals for the five years are as follows:

(1) Net profits $ 652,713.34

(2) Miscellaneous income included in these net profits 378,335.08

In the case of the trading company this does not take into consideration proper depreciation for which the company should have provided.

Mr. [illegible]: Are they paying dividends without making provision for depreciation ?

Mr. [illegible]: In [illegible] dividends. In 1926 they paid the first [illegible] since such was once organised in 1922.

The CHAIRMAN: What did they do with these profits ?

Mr. [illegible]: In [illegible] ?

The CHAIRMAN: Yes.

Mr. [illegible]: Well, they hung on to them; they kept them.

Mr. [illegible]: They reduced the amount of the bank [illegible] ?

Mr. [illegible]:

The amount of miscellaneous income included in the net profits of these companies in the years [illegible] is given on table 1 attached. For the three companies the totals for the five years are as follows:

(1) Net profits $ 6[illegible],712.34

(2) Miscellaneous income included in these net profits [illegible]

"so that a very large proportion of the net profits is due to returns from outside investments."

The COMMISSIONER: Your outside investments are from moneys taken from the company ?

Mr. KELLOCK: Earned by the company ?

The COMMISSIONER: Yes.

Mr. KELLOCK: I assume so, My Lord. I suppose it might also include part of the original capital subscription. I do not know that you can say that it is entirely made up of profits.

"In regard to the fourth company, the Guelph Carpet and Worsted Spinning Mills, Ltd., while setting out figures--(page 350 of his factum) the Commission Counsel stated that this company produces other products besides carpets and that the Commission Auditor has not got the detailed analysis of the earnings. Under the circumstances it is submitted that the figures detailed for comparison by the Commission Counsel provide no basis for comparison.

It is submitted that on the facts and figures which I have presented these companies did not unduly profit by the increase in tariff in 1930 (reduced in 1932 and again in 1935, Exhibit 641, p.4) or through any attempts at price stabilization. The above figures show that:

(a) In the years prior to 1930 the com-

"so that a very large proportion of the net profits is due to returns from outside investments.

The COMMISSIONER: Our outside investments are from money taken from the company?

Mr. McLAUGH: Earned by the company?

The COMMISSIONER: Yes.

Mr. McLAUGH: I assume so, my lord. I assume it would also include part of the original capital subscription. I do not know that you can say that it is entirely made up of profits.

"In reply to the fourth company, the Canadian Copper and Sulphur Company, Ltd.", while setting out figures--(page 880 of the record) the Commission counsel states that

and that the Commission neither has nor can get detailed analysis of the evidence. Under the circumstances it is submitted that the figures detailed for comparison by the Commission counsel provide no basis for comparison.

It is submitted that on the facts and figures which I have presented these companies did not unduly profit by the increase in tariff in 1930 (reduced in 1933 and again in 1936). Exhibit 640, p.4) or through any attempts at price stabilization. The above figures show

that

in the years prior to 1930 the

"panies never made an excessive return on their investments.

(b) Between 1930 and 1933 the profits were very much reduced, two of the companies showing losses in certain years. The largest company, the Toronto Carpet Co., was forced to pass the dividend on its preferred shares in 1933.

(c) In 1934 and 1935 the profits were still below a reasonable level on the capital invested.

The letter of Mr. A. E. Cuthbertson, of the Harding Carpet Co., of November 19th, 1936, giving details of the price stabilization plan was not quoted in full in the Commission Counsel's factum. It reads as follows:

'As requested by you, I am giving you herewith a short statement of the efforts made by the Canadian carpet manufacturers to form among themselves an association, or organization, for mutual benefit and protection, and am enclosing correspondence, which it is hoped will give further and more detailed information in this regard.

The following figures represent the contrast in business conditions between 1929 and 1933:-

	Total Business	Canadian Production	Importations
1929	$8,778,179.	$5,434,555.	$3,343,624.
1933	2,615,531.	2,195,849.	419,682.

panies never made an excessive return on their investments.

(b) Between 1920 and 1930 the profits were very much reduced, two of the companies showing [illegible] deficit. The company, [illegible] the Toronto Carpet Co., was forced to pass the dividend on its preferred shares in 1928.

(c) In 1931 and 1932 the profits were still below a reasonable level on the capital invested.

The letter of Mr. [illegible] Robertson, of the Harding Carpet Co., of November 19th, 1932, giving details of the price stabilization plan was not quoted in full in the Commission Counsel's Report. It reads as follows:

'As requested by you, I am giving you herewith a short statement of the efforts made by the Canadian carpet manufacturers to form among themselves an association, or organization, for mutual benefit and protection, and an enclosing correspondence, which is based will give further and more detailed information in this regard.

The following figures represent the constant in business conditions between 1920 and 1932:-

	Total Sales	Depreciation Provision	[illegible]
1920	$2,770,172.	$ [illegible],054,355.	$1,[illegible].
[illegible]	[illegible].	[illegible],[illegible].	[illegible].

"The Royal Commission on price spreads reported on page 85, as follows:- Five carpet and rug manufacturers suffered a 59 per cent loss in business from 1930 to 1933 but, while their employment fell sharply, the wage rates in 1933 were higher than ~~xx~~ any other group reviewed.

The drop of 59 per cent in volume took place in spite of the fact that the emergency tariff in 1930 (which has since been reduced twice) has preserved the bulk of the Canadian market for the Canadian mills. It is obvious that the Canadian mills had difficulty in operating on only $2,200,000 production. Consequently, and inevitably, they indulged in serious price-cutting, each in the effort to obtain as much business as possible. The result was not only disastrous to profits, and dividends were passed, but threatened capital structures. In an effort to put a stop to this destructive price cutting the four principal mills - Brintons, Guelph, Hardings and Toronto Carpet - met in March, 1934, with the idea of establishing a uniform costing basis, discount list and price structure, along the lines of the British Carpet Manufacturers' Association. In this way, they hoped to escape the fate of the many Ontario furniture factories, who went bankrupt, due to similar conditions.

The services of a chartered accountant, Mr. Kris A. Mapp, C.A., of Toronto, were engaged, with

"The Royal Commission on price spreads reported on page 86, as follows:- "Five cotton and rug manufacturers suffered a 50 per cent loss in business from 1929 to 1930 but, while their employment fell sharply, the wage rates in 1930 were higher than in any other group reviewed.

The drop of 50 per cent in volume took place in spite of the fact that the emergency tariff in 1930 (which has since been removed twice) has preserved the bulk of the Canadian market for the Canadian mills. It is obvious that the Canadian mills had difficulty in operating on only 15,000,000 production. Consequently and inevitably, they indulged in cutthroat prices cutting, each in the effort to obtain as much business as possible. The result was not only disastrous to profits, but strengthened capital structure. In an effort to put a stop to this destructive price cutting the four principal mills - Dominion, Empire, Dominion and Toronto Carpet - met in March, 1931, with the idea of establishing a uniform costing basis, discount list and price structure, since the time of the [illegible] association. In this way, they hoped to escape the fate of the many Ontario furniture factories who went bankrupt, due to similar conditions.

The meeting of a [illegible] Commission, Mr. [illegible], Chairman of [illegible], was secured, with

"the idea of exploring the cost systems and endeavouring to arrive at a uniform basis. The object of the association was most emphatically not to secure high prices, but to protect the industry against the destructive practices referred to. The writer spoke to a number of the important buyers in the trade, and most of them were in favour of this measure to remedy the chaotic conditions then existing.'"

That seems to be the common condition all the way through; producers, wholesalers and distributors do not like disorganized price-cutting practices to continue.

Mr. McRUER: You mean the merchants, not the purchasing public.

Mr. KELLOCK: Wholesalers, jobbers, down to retailers.

Mr. McRUER: But not the consumer.

Mr. KELLOCK: It is not in the interest of the consumer that price cutting should continue, that goods should be sold below cost of production, because that inevitably results in people being thrown out of employment, with loss of money.

"'The organization has no constitution, no by-laws, no written agreements, and no deposits are posted. Consequently, a breach of any understanding incurs no penalty, apart from the disapproval of the other factories, and the necessity of their meeting the new competition.

"the idea of exploiting the cost systems and [illegible]according to arrive at a uniform basis. The object of the association was most emphatically not to secure high prices, but to protect the industry against the destructive practices referred to. The writer spoke to a number of the important buyers in the trade, and most of them were in favour of this measure to remedy the [illegible] from happening.--

that seems to be the common condition all the [illegible] to not like disorganized price-cutting practices to continue.

Mr. [illegible]: You mean the wholesale, not the purchasing public.

Mr. [illegible]: Wholesalers, jobbers, down to [illegible].

Mr. [illegible]: But not the consumer.

Mr. [illegible]: It is not in the interest of the consumer that price cutting should continue, that goods should be sold below cost of production, because that inevitably results in people being thrown out of employment, with loss of money.

"The organization has no constitution, no by-laws, no written agreement, and no dues are paid. Consequently, a breach of any understanding incurs no penalty, apart from the disapproval of the other factories, and the necessity of their meeting the new competition.

"'From the start, there has been lack of unanimity, and the oragnization was unsuccessful in achieving uniformity in prices, discounts or construction.

The cost systems of the four companies were surveyed by Mr. Mapp in an endeavour to obtain a uniform basis, but differences of opinion among the members frustrated any useful result, and nothing developed from this work.

Terms of sale, namely, 2 per cent 10 days from first of following, or 60 days net, were common to all companies long before any association was mooted. The sales tax at first was included in the price, and when the tax was increased, the prices were similarly affected.

In June, 1934, however, the four companies acted uniformly in going over to a "tax extra" basis - thus, falling in line with the practice of most of the other industries, showing definitely on the invoice how much of the purchase price went to the mill, and how much was government tax.

Another natural objective of the association was the representation of the carpet industry's interests in tariff matters. The British industry made application to the Tariff Board in 1934, for an inquiry under the Ottawa agreements, but this request was withdrawn by them in February, 1935. During the past summer, on

Given the start, there has been lack of unanimity, and the organization was unsuccessful in achieving uniformity in prices, discounts or manufacture.

The cost system of the four companies were surveyed by Mr. Hogg in an endeavour to obtain a uniform basis, but differences of opinion among the members frustrated any useful result, and nothing developed from this work.

Terms of sale, namely, 2 per cent 15 days from first of following, or 60 days net, were common to all companies long before any association was mooted. The sales tax at first was included in the price, and when the tax was increased, the prices were similarly affected.

In June, 1924, however, the four companies acted uniformly in going over to a "tax extra" basis - thus, falling in line with the practice of most of their industries, placing definitely on the invoice how much of the purchase price went to the mill, and how much was government tax.

Another natural objective of the association was the representation of the carpet industry's interests in tariff matters. The British industry made application to the Tariff Board in 1924, for an inquiry under the Ottawa agreements, but this request was withdrawn by them in February, 1925. During the past summer, on

"'the occasion of the visit of the Canadian cabinet ministers to London to discuss trade matters, a carpet brief was prepared by the Association and presented to these members of the cabinet. A copy was also filed with the Tariff Board, and with your own Royal Commission on the Textile Industry.

As matters now stand, the Association is loosely knit, and although occasional meetings are held, and prices are included in the discussion, competition continues, and action consists, principally, in the announcement by one company of what it intends to do, with the others falling in line, of necessity. Proof of this is contained in the fact that since 1934, although advancing raw materials have produced increases in British and American carpet prices, Canadian prices have remained stationary, or, in many cases, have declined. This information is in the records of your Commission.

The enclosed correspondence will support and amplify the brief outline given above.'"

Then I refer to several pages of my friend's brief where he sets out certain letters. With regard to page 346 I submit:

"The letter of July 21, 1934, from Harding Carpets Limited, to Mr. Mapp shows that the engagement of Mr. Mapp did not eliminate competition among the carpet manufacturers.

"On occasion of the visit of the Canadian cabinet ministers to London to discuss trade matters, a compact brief was prepared by the [illegible] and presented to Prime Minister of the cabinet. A copy was also filed with the Tariff Board, and with your own royal Commission on the Textile Industry.

As matters now stand, the association is loosely knit, and without occasional meetings are held, and prices are included in the discussion, competition continues, and action consists, principally, in the announcement by one company of what it intends to do, with the others falling in line, of necessity. Proof of this is contained in the fact that since 1921, [illegible] and [illegible] interests in British and American cotton mills, Canadian firms have remained stationary, or, in many cases, have declined. This information is in the records of your Commission.

The enclosed correspondence will support and amplify the brief outline given above.

Then I refer to several pages of my Minority brief where is sets out certain matters. [illegible] to page 340 I submit:

"The letter of July 21, 1924, from Sterling Carpets Limited, to Mr. Kemp shows that the management of Mr. Kemp did not eliminate competition among the Sterling companies.

My friend sets out another letter on page 346 and my submission is:

"The four paragraphs of the letter of the 11th of January, 1935, from Harding Carpets Limited to Mr. Mapp, also indicate that competition between the companies had not been eliminated. No arbitrator was ever appointed as suggested by Mr. Mapp, as the Brinton-Peterboro/Carpet Company, Limited, refused to go on with further negotiations, because of the absolute ineffectiveness of controlling prices of the arrangement."

With regard to page 347 I submit:

"With reference to the letter of the 30th of April, 1935, it was never possible by reason of divergent opinions to consummate Mr. Mapp's proposal for establishing standard costs, and minimum selling prices; competition was too keen."

There is another reference to page 347.

"With reference to the letter of September 5, 1935, calling a meeting of the carpet manufacturers, the result of this meeting was that prices were lowered as a direct result of competition among the manufacturers."

I submit with reference to page 348:

"On page 348 of the factum this statement is made: ' There was a drop of 59 per cent in volume of production.' It is submitted that the serious falling-away of business in carpets

"The four paragraphs of the letter of the 11th of January, 1965, from Anthony Lawrence Limited to Mr. Lewis, also to leave that competition between the companies has not been eliminated. No arbitrator was ever requested as suggested by Mr. Lewis, as the Ontario-Quebec Company, Limited, refused to go on with further negotiations, because of the absolute ineffectiveness of controlling prices of the [illegible]."

Now compare to page 647 I submit:

"With reference to the letter of the 20th of April, 1965, it was never possible by reason of divergent opinions to consummate Mr. Lewis's proposal for establishing standard costs, and minimum selling prices; a competition was too keen."

Here is another reference to page 647:

"With reference to the letter of September 1, 1965, calling a meeting of the output committee, the result of this meeting was that prices were lowered as a direct result of competition among the manufacturers."

I submit with reference to page 648:

[illegible]

"during the depressed period created considerable unemployment among carpet workers. Internal competition, without some attempt at stabilizing prices, would have resulted in severe reductions in wage rates also, as it did in the furniture and clothing industries. The carpet industry paid the highest average hourly rates in the textile industries. (See Price Spreads Report, page 117). I have already referred to the Price Spreads Report with regard to that, and I have a comment to make in reference to page 351.

(17320 follows)

During the depressed periods, crushed consumers [illegible] [illegible] [illegible] [illegible]. Internal competition, without some attempt at regulating prices, would have resulted in severe reductions in wage rates also, as it did in the furniture and clothing industries. The cotton industry was the highest average hourly wages in the textile industries. (See "Iron Dynamic Issues", page L.7) I have already referred to the Union Jurisdiction report with regard to that, and I have a comment to make in reference to page L.8.

(INDEX follows)

"' These companies either for the purpose of increasing their own profits or nurturing a new company in the field'" -- that is here -- "'which, according to Mr. Cuthbertson's statement, was too limited already as the companies had difficulties in operating on only $2,200,000.00 production, entered into an agreement, etc.' It is submitted no statement was made that the field was too limited, except under conditions of acute depression. About 1920 there was a time when the Canadian mills had to ration their production. In 1929 there was business enough for all. Harding Carpets was organized in 1927 and commenced business in 1928, the executives, personnel, and the majority of the staff had already had many years experience in the carpet manufacturing business".

MR. McRUER: What do you mean --

MR. KELLOCK: I don't know just what my friend's argument there is because if the suggestion is that this company ought not to have gone into business that is rather counter to the current of my friend's argument, that there ought to be new people coming in all the time, that the people in the business should not monopolize the business there. My friend seems to right about face a little bit there.

MR. McRUER: No, I say they should not enter into an illegal agreement to keep anybody in business which just adds to the taxation on the consumer.

MR. KELLOCK: That is hardly it. The Harding Company went into business in March of 1928 and there was

"' These companies either for the purpose of increasing their own profits or nurturing a new company in the field'" -- that is here -- "'which according to Mr. Gutherrison's statement, was too limited already as the companies had difficulties in operating on only $4,500,000.00 production entered into an agreement, etc.' It is submitted no statement was made that the field was too limited, except under conditions of acute depression. About 1930 there was a time when the Canadian milks had to ration their production. In 1929 there was business enough for all. Dairies Corporation was organized in 1927 and commenced business in 1928, the executives, personnel, and the majority of the staff had already had many years experience in the export manufacturing business".

MR. MORTON: What do you mean --

MR. MACDONALD: I don't know just what my friend's argument there is because if the suggestion is that [illegible] is rather counter to the argument of my friend's argument, that there ought to be new people coming in all the time, that the people in the business should not monopolize the business there. My friend seems to right about face a little bit there.

MR. MORTON: No, I say they should not enter [illegible] in business which just adds to the taxation on the consumer.

MR. MACDONALD: That is hardly it. The Martins company with two members in Ontario and Quebec

no suggestion of any agreement until 1934.

MR. McRUER: Can you tell me what you mean by saying:

"--About 1920 there was a time when the Canadian mills had to ration their production".

I do not remember any evidence as to that.

MR. KELLOCK: The thing there, Mr. McRuer, is --

MR. McRUER: I am wondering what rationing of the production took place. You mean passing around among them the orders?

MR. KELLOCK: No.

MR. McRUER: How did they ration the production?

MR. KELLOCK: What I mean by that is this that at a time when there was more business than the mills could handle -- say I am one of the mills and I have so many orders I cannot fill them all. I have to give each of my customers less than they have actually ordered. That is what rationing means.

THE COMMISSIONER: That is, you ration the customer.

MR. KELLOCK: Yes, my lord.

MR. McRUER: That is not what you say here.

"About 1920 there was a time when the Canadian mills had to ration their production. In 1929 there was business enough for all."

It looks to me like the converse -- there was business enough for all.

MR. KELLOCK: No, I just go on to say in 1929, two years after the Harding Company had been organized, there was still business for all these companies in the field.

no suggestion of any agreement until 1934.

MR. MORDEN: Can you tell me what you mean by saying "--About 1930 there was a time when the Canadian mills had to restrict their production".

I do not remember any evidence as to that.

MR. HALLOCK: The table there, Mr. Morden, is --

MR. MORDEN: I am wondering what restricting of the production took place. You mean passing around among them the orders?

MR. HALLOCK: No.

MR. MORDEN: How did they restrict the production?

MR. HALLOCK: What I mean by that is this that at a time when there was more business than the mills could handle -- say I am one of the mills and I have so many orders I cannot fill them all. I have to refuse some of my customers less than they have actually ordered. That is what restricting means.

THE COMMISSIONER: That is, you restrict the customer.

MR. HALLOCK: Yes, my lord.

MR. MORDEN: That is not what you say here. "About 1930 there was a time when the Canadian mills had to restrict their production. In 1929 there was business enough for all."

It looks to me like the converse -- there was business enough for all.

MR. HALLOCK: No, I just go on to say in 1929, two years after the Harding Company had been organized, there was still business for all these companies in the field.

MR. McRUER: Then, in 1920 the Canadian mills could not handle the orders they were getting and had to ration their customers.

MR. KELLOCK: That is evidently the situation.

MR. McRUER: Under the duty that prevailed at that time.

MR. HALLAM: And the world conditions.

MR. KELLOCK: 1920 was probably one of the best periods, the best conditions we have experienced. My lord, at the very beginning of this small factum I have a word to say about the cotton companies.

MR. McRUER: Where?

MR. KELLOCK: Right at the front. It refers to a table that Mr. Howson worked out for my friend and which he has set out at page 199 of his brief, and he draws some conclusions from it.

MR. McRUER: Excuse me, I want to get what you are at; is it page one?

MR. KELLOCK: 199 of your factum.

THE COMMISSIONER: You skipped this?

MR. KELLOCK: Yes, my lord, I started in with the hosiery companies. I am coming back to this. My friend --

"--submits what are supposed to be comparable figures for Canadian and United States cotton mills showing:

(1) Return on total investment in operation after eliminating goodwill.

(2) Return on capital stock equity, after eliminating goodwill.

MR. MERRITT: Then, in 1920 the Canadian mills could not handle the orders they were getting and had to ration their customers.

MR. KELLOCK: That is evidently the situation.

MR. MERRITT: Under the duty that prevailed at that time.

MR. KELLOCK: And the world conditions.

MR. KELLOCK: 1920 was probably one of the best periods, the best conditions we have experienced. My lord, at the very beginning of this small trade I have a word to say about the cotton companies.

MR. MERRITT: Where?

MR. KELLOCK: Right at the front. It led me to a table that Mr. Lowson worked out for my friend and which he has set out at page 109 of his brief, and he draws some conclusions from it.

MR. KELLOCK: Excuse me, I want to get what you are at: is it page one?

MR. KELLOCK: 109 of your brief.

THE COMMISSIONER: You skipped this?

MR. KELLOCK: Yes, my lord, I started in with the hosiery companies. I am coming back to this. My friend —

"—submits what are supposed to be comparable figures for Canadian and United States cotton mills showing:

(1) Return on total investment in operation after eliminating [illegible].

(2) Return on capital stock equity, after eliminating [illegible].

" The amount of goodwill deducted in the case of the United States companies amounts to approximately $2,000,000"--

MR. McRUER: No, that is not correct.

THE COMMISSIONER: It would not take many companies to make two million dollars.

MR. McRUER: That is not correct; my friend is under a misapprehension.

MR. KELLOCK: That figure isn't important. I will be glad to have it amended. That is not what I am driving at.

MR. McRUER: There is one item of ten million.

MR. HOWSON: It runs in different figures.

MR. KELLOCK: I would like to have the correct figure if you would be good enough.

THE COMMISSIONER: How many companies are comprised there?

MR. KELLOCK: It is stated, my lord; I think there are --

MR. HOWSON: It runs from 296 to 302 companies, I think it is. There are different groupings in each period.

MR. KELLOCK: I would like to have that figure actually although it doesn't matter. It doesn't affect the point I am coming to. Mr. Howson --

"-- has taken total capital investment in No. 1 above, less goodwill"--

THE COMMISSIONER: In what?

MR. KELLOCK: In my first, number one above your lordship sees "return on total investment"--

" The amount of goodwill deducted in the case of the United States companies amounts to

[illegible]

MR. MORDEN: No, that is not correct.

THE COMMISSIONER: It would not take many companies to make two million dollars.

MR. MORDEN: That is not correct; my friend is under a misapprehension.

[illegible] will be glad to have it amended. That is not what I am driving at.

MR. MORDEN: There is one item of ten million.

[illegible]

MR. MORDEN: I would like to have the correct figure if you would be good enough.

[illegible] How many companies are concerned there?

MR. MORDEN: My lord, I think there are --

MR. HOWSON: It runs from 396 to 808 companies, I think it is. There are different groupings in each period.

MR. MORDEN: I would like to have that figure actually although it doesn't matter. It doesn't effect the point I am coming to. Mr. Howson --

"-- has taken total capital investment in Co. above, less goodwill"--

[illegible]

MR. MORDEN: [illegible]

[illegible]

THE COMMISSIONER: --"in operation after eliminating goodwill".

MR.KELLOCK: Yes, my lord. He has taken total capital investment less goodwill and outside investments in the United States figures and in the Canadian figures he has taken just the same, but he has also deducted appraisal write-ups --

MR. McRUER: That is a mistake too.

MR. HOWSON: Not in my figures.

MR. McRUER: Mr. Howson's figures -- it is true in regard to the Canadian figures. In regard to the American figures appraisal write-ups were deducted too.

MR. HOWSON: This item of goodwill includes appraisal write-ups or what they call appreciation, goodwill and appreciation.

MR. McRUER: We proceeded on exactly the same basis as they did in the United States.

MR. KELLOCK: It doesn't show it.

MR. HOWSON: It does in exhibit 1291, part two.

THE COMMISSIONER: You say in the United States companies goodwill and appreciation together amounted to $2,000,000?

MR. HOWSON: In that particular grouping in that particular period. Take in the year 1935 it amounted to $10,772,000, the two items together, because there is a different grouping in that particular period.

THE COMMISSIONER: Your statement here requires to be re-cast in that case.

MR. KELLOCK: I would like to leave it as it is and look into that.

THE PRESIDENT: --"in operation after eliminating goodwill".

MR. KELLOCK: Yes, my lord. He has taken total capital investment less goodwill and outside investments in the United States figures and in the Canadian figures he has taken just the same, but he has also deducted general write-ups --

MR. HOWSON: That is a mistake too.

MR. HOWSON: Not in my figures.

MR. McKEEN: Mr. Howson's figures -- it is true in regard to the Canadian figures. In regard to the American figures [illegible] were deducted by Mr. [illegible] if possible deducting general write-ups or what they call appreciation, goodwill and eliminations.

MR. McKEN: He proceeded on exactly the same basis as they did in the United States.

MR. KELLOCK: It doesn't show it.

MR. HOWSON: It does in exhibit 1291, part two.

THE COMMISSIONER: You say in the United States companies goodwill and appreciation together amounted to $2,000,000?

MR. HOWSON: In that particular year ending in that particular period. Take in the year 1925 it amounted to $10,775,000, the two items together, because there is a different grouping in that particular period.

THE [illegible]: Does [illegible] to be re-cast in that case.

MR. KELLOCK: I would like to leave it as it is and look into that.

THE COMMISSIONER: You are starting on very different premises.

MR. McRUER: You see, we found in the American -- before the Federal Trade Commission they proceeded on exactly the same basis of analysis as Mr. Howson had proceeded on.

MR. KELLOCK: I am reading from where my friend sets this table out. It is the first place it appears in my friend's brief. We never saw it before. Page 199 it says --

THE COMMISSIONER: Wait a minute.

MR. KELLOCK: At the foot of the page, my lord; it says "return on total investment in operation after eliminating goodwill",--

THE COMMISSIONER: You had better start with the paragraph introductory to that.

MR. KELLOCK: "Mr. Howson has prepared a summary from a report to the Federal Trade Commission of the United States of America on the textile industry during the years, 1933, 1934, showing the earnings of a group of 296 companies and in the year 1935, 302 companies, combining both spinning and weaving of cotton goods in the United States of America. The following table indicates that the Canadian mills have been sustained during the depression by a far greater degree than the American mills",

and this table is headed "Return on total investment in operation after eliminating goodwill", and goodwill

THE COMMISSIONER: You are starting on very

Mr. McTURNAN: You see, we found in the American -- before the Federal Trade Commission they proceeded on exactly the same basis of analysis as Mr. Jackson had proceeded on.

Mr. MILLSON: I am reading from where my friend sets this table out. It is the first place it appears in my friend's brief. We never saw it before. Page 126 it says --

THE COMMISSIONER: Wait a minute.

Mr. MILLSON: At the foot of the page, my lord; it says "Return on total investment in operation after eliminating goodwill".--

THE COMMISSIONER: You had better start with the paragraph introducing to that.

Mr. [illegible] from a report to the Federal Trade Commission of the United States of America on the textile industry during the years, 1926, 1927, showing the earnings of a group of 220 companies and in the year 1929, 302 companies, combining both spinning and weaving or cotton goods in the United States of America. The following table indicates that the Canadian mills have been outclassed during the depression by a far greater degree than the American mills".

and this table is headed "Return on total investment in operation after eliminating goodwill", and goodwill

evidently includes appraisal write-ups without being expressly so stated, and the second table is at the top of page 200.

THE COMMISSIONER: Wait a minute.

MR. KELLOCK: And that is just exactly the same, "Return on Capital stock equity after eliminating goodwill", so I ask your lordship to disregard that for the time being.

MR. McRUER: We will be very glad to have Mr. Howson go over it with you. Mr. Howson may go over it with you. I quite agree with my friend it was not analyzed, and there was no cross-examination on it.

THE COMMISSIONER: It had better be done properly.

MR. McRUER: And he can do that.

THE COMMISSIONER: That, then, accounts for the whole of your page one.

MR. KELLOCK: Yes, there is no use saying anything about any more of it until I see whether my premises are to be changed or not.

Then, I want to deal as concisely as I can with this section of my friend's brief which deals with these price arrangements, starting particularly at page 290, my lord, and at the foot of that page your lordship sees clause B of section 498 of the Criminal Code. There has been some discussion that the word "unduly" is not included in there. I have already pointed out that in your lordship's judgment in this Zarowski case, the wheat pool case, the court there dealt with section 498 as though the word "unduly" applied throughout, and I should like to add to that

evidently includes general write-up without being necessarily so stated, and the second table is at the top of page 200.

THE CHAIRMAN: Yes I think.

MR. MACKAY: But that is just exactly the same "letter on capital stock equity after eliminating goodwill", so I can your lordship to disregard that for the time being.

MR. McRUER: We will be very glad to have Mr. Howson go over it with you. Mr. Howson may go over it with you. I quite agree with my friend it was not analyzed, and there was no cross-examination on it.

THE CHAIRMAN: It had better be done properly.

MR. McRUER: And he can do that.

THE CHAIRMAN: That, then, accounts for the whole of your page one.

MR. KELLOCK: Yes, there is no use saying anything about any more of it until I see whether my premises are to be changed or not.

Then, I want to deal as concisely as I can with this section of my friend's brief which deals with these price arrangements, starting particularly at page 200, my lord, and at the foot of that page your lordship sees clause E of section 498 of the Criminal Code. There has been preliminary evidence that the "unduly" is not included in there. I have already pointed out that in your lordship's judgment in this Canadian case, the Privy Council, Lord Atkin, dealt with section 498 as though the word "unduly" applied throughout, and I should like to add to that

a reference to the case of The King v. Gage.

THE COMMISSIONER: Is that the Winnipeg case?

MR. KELLOCK: Yes, it is, my lord.

MR. McRUER: Yes; there are two Gages. Is it number one or two?

MR. KELLOCK: Number one.

THE COMMISSIONER: I got that in Manitoba the other day.

MR. KELLOCK: It is The King v. Gage(No. 1), reported in 13 Canadian Criminal Cases, page 415. Now, Mr. Justice Phippen was the trial judge --

THE COMMISSIONER: What page did you say?

MR. KELLOCK: Page 415. Mr. Justice Phippen was the trial judge, and at 416 in dealing with this subject he says:

> " It is apparent from the reading of the Act that section 498, sub-section (b) covers as a generality the same ground which sub-sections (a), (c) and (d) cover specifically, yet under sub-sections (a), (c) and (d), to constitute an offence, the restriction must be 'undue', while sub-section (b) contains no limitation. To construe (b) in its literal sense would mean that under one part of section 498 the doing of an act, without more, is punishable, while under another part of the same section the same act is only an offence if done unduly - a legal condition it is impossible to attribute to the intention of Parliament."

reference to the case of Rex v. Gage.

THE COMMISSIONER: Is that the Hunter case?

MR. ADDUCK: Yes, it is, my Lord.

MR. MOLSON: Yes; there are two Gages. Is it number one or two?

MR. ADDUCK: Number one.

THE COMMISSIONER: I got that in Hamilton the other day.

MR. ADDUCK: It is the King v. Gage, 1), reported in 15 Canadian Criminal Cases, page 413. Now, Mr. Justice Fullerton was the trial judge --

THE COMMISSIONER: What page did you say?

MR. ADDUCK: Page 413. Mr. Justice Fullerton was the trial judge, and at 415 in dealing with this subject he says:

" It is apparent from the reading of the act that section 498, sub-section (b) covers a similar ability the same ground which sub-sections (a), (c) and (d) cover specifically, yet under sub-sections (a), (c) and (d), to constitute an offence, the restriction must be 'among', while sub-section (b) contains no limitation. To suppose (b) in the literal sense would mean that under one part of section 498 the doing of an act, without more, is punishable, while under another part of the same section the same act is only an offence if done having - a hard condition it is impossible to attribute to the intention of Parliament."

And he deals with it on that basis. The case went to the Court of Appeal, my lord, and it is reported in the same volume at page 428, and the latest case on the subject, my lord, is the case of The King v. Canadian Import Company in 61 Canadian Criminal Cases, 114, and on appeal in 62 Canadian Criminal Cases, 342. That case was under section 498. That is the coal prosecution case, my lord, and there is no suggestion that there is any distinction with regard to any of the clauses.

MR. McRUER: That is the one in Quebec, was it?

MR. KELLOCK: Yes.

THE COMMISSIONER: You gave me that Zarowski case the other day, the one from Saskatchewan; have you the reference before you there?

MR. KELLOCK: No, my lord. It was 1926, 3 Dominion Law Reports, but I don't remember the page, my lord.

MR. McRUER: I have got it here. 3 Dominion Law Reports, page 810. 1926, 3 Dominion Law Reports, page 810.

THE COMMISSIONER: Yes, I have them altogether now. I have that one some place else.

MR. KELLOCK: It is in connection with the discussion in my main factum, my lord, where your lordship has a note of that case.

Now, my lord, my friend starts in at page 293 and he cites part of the judgment in the Supreme Court in Weidman vs. Sharagge, and I pointed out to your lordship the curious error in the first sentence

And he deals with it on that basis. The case went to the Court of Appeal, my lord, and it is reported in the same volume at page 488, and the latest case on the subject, my lord, is the case of the King v. Canadian Import Company in 61 Canadian Criminal Cases, 114, and on appeal in 61 Canadian Criminal Cases, 242. That case was under section 476. That is the coal prosecution case, my lord, and there is no suggestion that there is any distinction with regard to any of the clauses.

MR. MORDEN: That is the one in Quebec, was it?

MR. [illegible]: Yes.

THE COMMISSIONER: You gave me that Saywell case the other day, the one from Bonnerbrown; have you the reference before you there?

MR. MORDEN: No, my lord. It was 1926 Dominion Law Reports, but I don't remember the page, my lord.

MR. McKEON: I have got it here. 2 Dominion Law Reports, page 610. 1926, 2 Dominion Law Reports, page 610.

THE COMMISSIONER: Yes, I have them without-hand now. I have that one some place else.

MR. MORDEN: It is in connection with the discussion in my mind a few days, my lord, where your lordship has a note of that case.

Now, my lord, my friend starts in at page 242 and he gives part of the judgment in the Supreme Court in Weldman vs. Sharegge, and I pointed out to your lordship the curious error in the first [illegible]

of the judgment of the Chief Justice which my friend sets out there.

" It is not necessary, I repeat, that the agreement should be in itself fraudulent or otherwise illegal; and all agreements which prevent or lessen competition today"-- my friend has it "today". The correct words are "do not come within the operation of the statute."

MR. McRUER: Why do you say that is a curious error?

MR. KELLOCK: Well, it is curious.

MR. McRUER: It was a typographical error. You do not suggest for a moment --

THE COMMISSIONER: That was corrected before.

MR. KELLOCK: Yes, my lord.

MR. McRUER: I don't know why you say it is curious.

MR. KELLOCK: I do wish my friend would not be so sensitive. I will correct my language in any way you like.

MR. McRUER: I wonder why you say it is curious.

MR. KELLOCK: Curious for this reason that my submission, your lordship, is, that as your lordship reads my friend's argument, all the way through my friend argues -- and this is my submission -- that the mere existence of an agreement is enough. It is true in one or two places in his brief my friend talks about injury to the public, but my friend does not attempt to show that, and on the facts as to the earnings of

of the judgment of the Chief Justice which my friend sets out there.

" It is not necessary, I repeat, that the agreement should be in itself fraudulent or otherwise illegal; and all agreements which prevent or lessen competition today"-- my friend has i "today". The correct words are "do not come within the operation of the statute."

MR. MORTON: Why do you say that is a serious error?

MR. MONDER: It was a typographical error. You do not argue it for a moment --

THE COMMISSIONER: That was corrected before.

MR. KELLOCK: Yes, my lord.

MR. MONDER: I don't know why you say it is serious.

MR. KELLOCK: I do wish my friend would not be so sensitive. I will correct my language in any way you like.

MR. MONDER: I wonder why you say it is serious.

MR. KELLOCK: Options for this reason that my submission, your lordship, is, that as your lordship reads my friend's argument, all the way through my friend argues -- and this is my submission -- that the mere existence of an agreement is enough. It is true in one or two places in his brief my friend talks about injury to the public, but my friend does not attempt to show that, and on the texts as to the earnings of

the companies affected, and the other facts which I won't detail but which I have discussed fully with your lordship, my submission is there isn't a trace of any injury to the public or the consumer or any undue enhancement of prices in any way. There are one or two references to that --

THE COMMISSIONER: What happened in the Weidman case?

MR. KELLOCK: My lord?

THE COMMISSIONER: Was he convicted there?

MR. KELLOCK: It was an entirely different case. I don't know whether your lordship remembers the case. It was two junk dealers who were buying and they were in a position where they bought everything in sight, and they depressed their prices by concerted action, and as I will refer --

THE COMMISSIONER: Depressed their buying prices.

MR. KELLOCK: Yes, they depressed their buying prices to such an extent that --

MR. McRUER: That is not quite right. What they did was they were operating ostensibly in opposition but they had an agreement between themselves to pool their business, and then they went out to buy junk and while apparently agreeing to compete they were agreeing they would not compete, that it was all one business, and then they got into a lawsuit over the terms of the agreement, and the defendant pled it was an agreement in restraint of trade contrary to the Criminal Code, and the Supreme Court of Canada held that was true. Then, in the Stimpson

the companies affected, and the other facts which I won't detail but which I have discussed fully with your lordship, my submission is there isn't a trace of any injury to the public or the consumer or any undue enhancement of prices in any way. There are one or two references to that --

THE CHAIRMAN: What happened in the matter of prices?

MR. [illegible]: My Lord?

THE CHAIRMAN: Was he convicted then?

MR. [illegible]: It was an entirely [illegible] case. I don't know whether your lordship remembers the case. It was two lime dealers who were buying and they were in a position where they bought everything in sight, and they depressed their prices by concerted action, and so I will refer --

MR. [illegible]: Yes, they depressed the buying prices to such an extent that --

MR. MORRIS: That is not quite right. What they did was they were operating extensively in competition but they had an agreement between themselves to pool their business, and then they went out to buy lime and with a superfluity existing to compete they were agreeing they would not compete, that it was all one business, and then they [illegible] the terms of the agreement, and the defendant pled [illegible] by the Revised Act, and the [illegible] [illegible]. Yes, in the [illegible]

Reeb case, which is a criminal case, the Supreme Court reiterated the law as laid down in Weidman v. Sharagge and said this is the law applicable to section 498 of the Criminal Code. None of these cases interpreted the Combines Act which was not in existence at the time of the Weidman and Sharagge case, not in its present form.

MR. KELLOCK: So far as the facts in the Weidman and Sharagge case my friend has stated them, with the additional fact that as part of the understanding between the plaintiff and defendant the idea was to depress their buying prices as much as possible. I just want to refer your lordship to page 14 of the judgement of Mr. Justice Idington.

THE COMMISSIONER: This is Weidman and Sharagge?

MR. KELLOCK: Yes, where his lordship says:

"The defendants swear the purpose of the agreement was to control the market for themselves.....to cease competition with each other",--

that is as between the plaintiff and the defendant --

"--to get as large a profit by keeping out competition as they could; and he says they succeeded",

and the learned judge, trial judge, found the defendant's story was the true one, and at 19 his lordship says:

"One thing which must appear in any given case is that the agreement or arrangement is one designed to prevent or lessen competition. It must be also an attempt at what would be an

Reed case, which is a criminal case, the Supreme Court reinterpreted the law as laid down in Weldman v. Sherrage and said this is the law applicable to section 498 of the Criminal Code. None of these cases interpreted the Combines Act which was not in existence at the time of the Weldman and Sherrage case, not in its present form.

MR. ROBERTS: So far as the Act: in the Weldman and Sherrage case my friend has stated then with the additional fact that as part of the market-sharing between the plaintiff and defendant the idea was to depress their mutual prices as much as possible. I just want to refer your Lordship to page 14 of the judgment of Mr. Justice Kingstone.

THE COMMISSIONER: This in Weldman and Sherrage?

MR. ROBERTS: Yes, there the Lordship says:

"The defendants swear the purpose of the agreement was to control the market for themselves.....to cease competition with each other"—that is as between the plaintiff and the defendant — "—to get as large a profit by reaping out competition as they could; and he says they succeeded".

and the learned judge, trial judge, found the defendant's story was the true one, and at 19 his Lordship says:

"One thing which must appear in any given case is that the agreement or arrangement is one designed to prevent or lessen competition. It must be also an attempt at what would be in

"unduly doing thereof that is agreed upon".

And at 27 --

"The enhancing or lowering of prices; the variation thereof without obvious causes other than the evil purpose the Act forbids; the margin of profit;.....the entire conduct of the parties and the results produced must each and all furnish some aid to determine whether or not the Act has been intended to be violated".

Mr. Justice Anglin, as he then was, at 41 says:

"But every agreement to prevent or lessen competition is not declared to be an offence. The elimination or diminution of competition must be undue".

And at 42, and this is an important statement:

".....Whereas under the latter"-- that is undue, the word undue --"the prime question certainly must be, does it, however advantageous or even necessary for the protection of the business interests of the parties, impose improper, excessive or oppressive restrictions upon that competition the benefit of which is the right of everyone?"

In the Canadian Import case that I have just referred your lordship to that puts it on a ground which applies very much to the situation here. Mr. Justice Bond in the trial judgment at 349 says this:

"I do find ample evidence"-- and I am not reading it all --"to establish that the appellant's intention was to gain control of the industry

"unduly doing thereof that is agreed upon".

And at 27 --

"The enhancing or lowering of prices; the restriction thereof without obvious causes other than the evil purpose the Act forbids; the margin of profit;.....the entire conduct of the parties and the results produced must each and all from some aid to determine whether or not the Act has been intended to be violated".

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In the Canadian Import case that I have just referred your Lordship to that puts it on a ground which applies very much to the situation here. Mr. Justice Rand in the trial judgment at 249 says this:

"I do find ample evidence"-- and I am not reading it all --"to establish that the appellant's intention was to gain control of the industry

"so as to exclude (as indeed they succeeded in doing to a marked degree) competition in the trade, and by so doing to create a price structure based not upon the intrinsic merits of the business, that is, the cost of coal laid down at the wharf and subsequently delivered to the consumer, or the fair return upon capital invested, or upon the turnover or upon the net profit per ton,-- on the contrary an arbitrary price structure was agreed upon..... based upon American differentials: and this in my opinion brings the agreement within the prohibitions as being undue and detrimental to the public and also designed to restrict competition unduly..."

That view was also expressed in the Court of Appeal. Mr. Justice St. Germain at page 372 says:

"The other change 'In connection with the foregoing it is the intention to adhere to present price differentials between American and Welsh anthracite in establishing prices to the trade as far as it is possible so to do' shows undoubtedly as seen previously, that the object is not to fix wholesale and retail prices based on the cost price which is quite in order, but rather to fix prices based on those of American anthracite without consideration therefore of the question of a reasonable margin of profit".

And at 372:

"At no point is it established that the difficulties which had accompanied the development of the anthracite trade preceding the formation

"so as to exclude (as indeed they succeeded in doing to a marked degree) competition in the trade, and by so doing to create a price structure based not upon the intrinsic merits of the business, that is the cost of coal laid down at the wharf and subsequently delivered to the consumer, or the fair return upon capital invested, or upon the turnover or upon the net profit per ton,-- on the contrary an arbitrary price structure was erected upon..... based upon American differentials: and this in no opinion brings the operators within the prohibition as being unfair and detrimental to the public and also designed to restrict competition unduly."

That view was also expressed in the Court of Appeal. Mr. Justice St. Germain at page 372 says:

"The other clause 'in connection with the foregoing' it is the intention to adhere to present price differentials between American and Nova Scotia coals in establishing prices to the trade so far as it is possible so to do' shows undoubtedly as seem probably, that the object is not to fix wholesale and retail prices based on the cost price which is quite in order, but rather to fix prices based on those of American anthracite without consideration therefore of the question of a reasonable margin of profit".

Again at 377:

"At no point is it established that the differentials did not represent the difference in the selling value of the respective

"of the agreement in question were the result of the lowering of prices by too active competition". I submit, my lord, that is exactly what has been shown here, that it was too active competition which brought this about in the depression years for the most part, and that the prices certainly are based on the companies' costs and a reasonable return, if they got any return at all, on the capital which is employed, and it has not been shown by anybody -- in fact, could not be shown, in my submission, that there was anything undue about the profit which has been earned.

MR. McRUER: Of course, I never assumed to prove a case of criminal guilt against these people. I said time and again that I was not going to take up the time of the Commission with it except as it pertained to a tariff inquiry that they did agree among them not to compete; that is all, because to either say they are guilty or not guilty would be a very improper thing to do because we haven't gone into all the evidence. My friend says I have not proved this and I have not proved that. I have not attempted to prove that they are guilty of this offence.

MR. KELLOCK: I am not asking his lordship to do that either, but what my friend does wind up by asking your lordship to do is to refer this matter to the Registrar under the Act. Now, my lord, my submission is --

THE COMMISSIONER: Under the Combines Act.

MR. KELLOCK: Yes. My submission is that

"of the agreement in question were the result of manufacturing efforts on the Indian subsidiaries".

I submit, my lord, that is exactly what has been shown here, that it was too active competition which brought this about in the depression years for the most part, and that the prices certainly are based on the companies' costs and a reasonable return. If they got any return at all, on the capital which is employed, and it has not been shown by anybody — in fact, could not be shown, in my submission, that there was anything undue about the profit which has been earned.

MR. HOLDEN: Of course, I never assumed to prove a case of criminal guilt against these people. I said time and again that I was not going to take up the time of the Commission with it except as it pertained to a fairly tragic that they did agree among them not to compete; that is all, because to either say they are guilty or not guilty would be very improper thing to do because we haven't gone into all the evidence. My friend says I have not proved this and I have not proved that. I have not attempted to prove that they are guilty of this offence.

MR. ADDISCOTT: I am not asking his lordship to do that either, but what my friend does ask us by asking your lordship to do is to refer this matter to the Registrar under the Act. Now, my lord, my submission is —

[illegible]

MR. HOLDEN: [illegible]

unless there was any evidence here to show that what was done was improper in any way, either that the prices were excessive, that they resulted in excessive and unfair and improper returns to the company, then that would be one thing, but my submission, my lord, is that when these facts are examined, as I have called them to your lordship's attention, that there is nothing of that kind, nothing of that kind at all; that the worsted cloth agreement, the full fashioned hosiery agreement particularly, the carpet agreement arose out of depressed conditions where goods were being sold at cut throat prices, and there was competing for the business and there was not enough to go around.

MR. McRUER: I can soon disprove a lot of that.

MR. KELLOCK: Just a moment. I am speaking of what is the evidence, and my friend --

THE COMMISSIONER: What do you mean by saying there was not enough to go around; wasn't enough what?

MR. KELLOCK: Wasn't enough business, my lord.

THE COMMISSIONER: Not enough demand, you mean?

MR. KELLOCK: Yes.

MR. McRUER: Therefore they wanted to raise the prices to the consumer.

MR. KELLOCK: There isn't a shred of evidence of that.

MR. McRUER: That is the object; it was going to be made too low.

MR. KELLOCK: My friend cannot, of course, see a

was done was improper in any way, either that the prices were excessive, that they resulted in excessive and unfair and improper returns to the company, then that would be one ruling, but my submission, my Lord, is that when these facts are examined, as I have called them to your Lordship's attention, that there is nothing of that kind, nothing of that kind at all; that the worsted cloth movement, the full fashioned [illegible], the [illegible] arose out of depressed conditions where goods were being sold at our utmost prices, and there was competition for the business and there was not enough to go around.

Mr. MORTON: I can soon disprove a lot of that.

MR. KILGOUR: Just a moment. I am speaking of what is the evidence, and my friend --

THE COMMISSIONER: Not so; you have to be saying there was not enough to go around; wasn't enough when

MR. KILGOUR: Wasn't enough business, my Lord.

THE COMMISSIONER: Not enough demand, you mean?

MR. KILGOUR.

MR. MORTON: Therefore they wanted to raise the prices to the consumer.

MR. KILGOUR: There isn't a shred of evidence of that.

MR. MORTON: That is the object; it was going to be made the law.

MR. KILGOUR: Which [illegible], of course, [illegible]

thing except that an agreement of this kind is for the purpose of raising the price. That is all my friend can see and he stops there.

THE COMMISSIONER: When you do see an agreement of this kind it is your duty to stop and scrutinize it very carefully.

MR. KELLOCK: Quite, and, my lord, I have tried to do that, and my submission to your lordship is that this agreement not only did not unduly enhance prices, but did not enhance them at all. They were in the nature of what you might call stop loss agreements. Competition was driving prices down where the companies were selling at unprofitable prices. In order to prevent that thing going further with its logical result --

THE COMMISSIONER: You are stating facts there. Are they really before me?

MR. KELLOCk; Yes.

THE COMMISSIONER: That competition was driving prices down.

MR. KELLOCK: Yes, my lord, in my main factum I have set the evidence out in detail. Now, my lord, that applies particularly to the worsted cloth, full fashioned hosiery and the carpets. We come to the cotton thread which applied only up to 39's, and the towels. Now, there is a difference between the two. Take cotton thread first.

SECRETARY WHITELEY: Cotton yarns, you mean.

MR. KELLOCK: That is correct, cotton yarn. Some only of the companies were concerned in ithem. Your

thing except that an agreement of this kind is for the purpose of raising the price. That is all my friend can see and he stops there.

THE COMMISSIONER: When you to see an agreement of this kind it is your duty to stop and scrutinize it very carefully.

MR. ROBLOCK: Quite, and, my lord, I have tried to do that, and my submission to your lordship is that this agreement not only did not unduly increase prices, but did not increase them at all. They were in the nature of what you might call stop loss agreements. Competition was driving prices down where the companies were selling at unreasonable prices. In order to prevent that thing going further with its logical result --

THE COMMISSIONER: You are stating facts there, are they really before me?

MR. ROBLOCK: Yes.

THE COMMISSIONER: That competition was driving prices down.

MR. ROBLOCK: Yes, my lord, in my main factum I have set the evidence out in detail. Now, my lord, that applies particularly to the worsted cloth, full fashioned hosiery and the carpets. We come to the cotton thread which applied only up to 88's, and the towels. Now, there is a difference between the two. Take cotton thread first.

MR. CHAMPAGNE MATTHEWS: Cotton yarns, you mean.

MR. ROBLOCK: That is correct, cotton yarn. Some of the companies were combined in 1926. The

lordship has the records of the earnings of these companies, and your lordship has the additional fact that other companies were manufacturing these yarns for sale. Now, these particular companies could not maintain improper, undue prices for cotton yarn in the face of the other sources of supply. Not only that, but other companies who did not manufacture cotton yarn for sale did manufacture cotton yarn for their own purposes, and if there was anything unduly attractive about the prices that were being obtained for the cotton yarn under this understanding then these other companies certainly would have come into the market, and they did not do it. So that my submission, my lord, is there isn't a shred of evidence with regard to the cotton yarn understanding that it resulted in any improper or undue prices being obtained. Then, you come to towels. Now, towels were based entirely on cost of production. The only way that a uniform price would be arrived at as between two or more companies making towels would be that if the exact same construction was used then the method of costing which was used would have arrived at the same price. But it again had a direct relation to the cost of production and there isn't any evidence at all that any of them resulted in improper prices being arrived at in the end.

So that, my lord, my submission is that these agreements fall into two classes. The first class is those that were brought about by depressed conditions that I have spoken about and referred to in the evidence,

Lordship has the records of the earnings of these companies, and your Lordship has the additional fact that these companies were consequently kept quite busy for such. So, these petitioner companies could not maintain improper, undue prices for cotton yarn in the face of the other sources of supply. Not only that, but other companies who did not manufacture cotton yarn for sale did manufacture cotton yarn for their own purposes, and if there was anything unduly attractive about the prices that were being obtained for the cotton yarn under this amortization, then these other companies certainly would have come into the market, and they did not do it. So that, my lord, is there isn't a shred of evidence with regard to the cotton yarn amortization that it resulted in any improper or undue prices being obtained. Then, you come to towels. Now, towels were taxed entirely on cost of production. The only way that a uniform price could be maintained as between two or more companies making towels would be that if the exact same consideration was used than the method of costing which was used would have arrived at the same price. But it again had a direct relation to the cost of production and there isn't any evidence at all that any of them resulted in improper prices being arrived at in the end.

So that, my lord, my submission is that these agreements fall into two classes. The first class [illegible]

that they were in the nature of stop loss agreements to prevent companies incurring heavier losses than they then were incurring in connection with these particular lines that were affected. In the others they were based, in the case of towels, absolutely on cost of production, and that there is no evidence that either in the case of the towel or cotton yarn there was anything out of line in the prices which were obtained, and there was both -- in the case of the cotton yarn there was other domestic as well as import competition which would prevent any undue prices being charged --

MR. McRuer: How would imports come into it?

MR. KELLOCK: In the case of towels there also was import competition, and I have given your lordship the exact figures on that in my main factum. So that my submission, my lord, is with regard to these agreements that they were quite proper, if one looks at them from the other standpoint entirely. If they did prevent the companies incurring increased losses without resulting in any undue prices being charged then they were a good thing from the standpoint of everybody because insofar as they had any effect at all, covering such a few lines of the companies' production, insofar as they had any effect at all they kept the companies in business and maintained employment, and the logical result of doing nothing and allowing these intense competitive conditions to exist is that somebody is driven out of business with consequent loss of employment, loss of investment

that they were in the nature of stop loss agreements
or guarantees. Possibly further inquiry would show that
they were investing in connection with these particular
lines that were affected. In the others they were
based, in the case of towels, directly on cost of
production, and that there is no evidence that either
in the case of the towel or cotton yarn there was
anything out of line in the prices which were obtained,
and there was both -- in the case of the cotton yarn
there was other domestic as well as import competition
which would prevent any undue prices being obtained --

Mr. McTague: How would imports come into it?

Mr. Hallock: In the case of towels there also
was import competition, and I have given your lordship
the exact figures on that in my main return. So
that my submission, my lord, is with regard to these
agreements that they were quite proper, if one looks
at them from the other standpoint entirely. If they
did prevent the competition leading increased business
without resulting in any undue prices being obtained
then they were a good thing from the standpoint of
everybody because inasmuch as they had any effect
at all, covering such a few lines of the commodities
production, inasmuch as they had any effect at all they
kept the companies in business and saved them employ-
ment, and the logical result of doing nothing and
allowing these intense competitive conditions to
exist is that nobody is driven out of business
with consequent loss of employment, loss of in-

and, after all, when the business gets concentrated in the stronger hands why then the prices go up and the consumer pays in the long run.

MR. McRUER: Look after that by a reduction in the tariff.

MR. KELLOCK: So, my lord, the legislation on the subject, as your lordship well knows, does not say that an agreement or an understanding with regard to prices is improper. It merely says that if it results, or if one can see that it is likely to result in prejudice or harm or detriment -- the language of the statute -- to any one of the clauses mentioned in the statute then it is illegal, but until that point is reached it is not. It is perfectly proper, and my submission is, my lord, that the agreements in question here, when your lordship considers them in connection with all the facts which I have tried to bring to your lordship's attention, and the earnings of the companies affected, and their losses, then it cannot be said there is any presumption, that there is even the least presumption of any detriment or anything improper about these agreements in any way.

My lord, with regard to the cotton yarn, for instance, just to illustrate further what I meant. In exhibit 894, which is the Tariff Board Report of April, 1936, there are the following companies listed as selling cotton yarns: There is Canadian Cottons, Dominion Yarns, Dominion Textile, Hamilton Cotton, Wabasso Cotton, Cosmos Imperial and the York Knitting

and, after all, when the business gets concentrated in the stronger hands why then the prices go up and the consumer pays in the long run.

MR. MORPH: Look after that by a reduction in the tariff.

MR. KILGOUR: So, my lord, the legislation on this subject, as your lordship well knows, does not say that an agreement or an understanding with regard to prices is improper. It merely says that if it results, or if one can see that it is likely to result in prejudice or harm or detriment -- the language of the statute -- to any one of the clauses mentioned in the statute then it is illegal, but until that point is reached it is not. It is perfectly proper, and my submission is, my lord, that the agreements in question here, when your lordship considers them in connection with all the facts which I have tried to bring to your lordship's attention, and the situations of the companies affected, and their losses, then it cannot be said there is any presumption, that there is even the least presumption of any detriment or anything improper about these agreements in any way.

My lord, with regard to the cotton yarn, for instance, just to illustrate further what I meant. In exhibit 894, which is the Tariff Board Report of April, 1926, there are the following companies listed as selling cotton yarns: There is Canadian Cottons, Montreal Yarns, Dominion Textile, Montreal Cotton, Kingsey Spinning, Queens Thread and So Fast Cotton

Mills.

MR. McRUER: They sell yarns of different classifications than those included in this. Cosmos Imperial are makers of commercial --

MR. KELLOCK: I am going to ask my friend to put his hands on the evidence for some of this.

MR. McRUER: I know, but don't conjure up things.

MR. KELLOCK: My friend is making a lot of general statements.

MR. McRUER: In this matter I purposely said time and again we are not going into the deep refinements of this as if it were a prosecution of these people for a breach of these acts, but when you come to put up a statement that yarns manufactured by Cosmos Imperial were the same as the yarns involved in these price agreements why I cannot let that go.

THE COMMISSIONER: Well, either they compete or they do not compete.

MR. KELLOCK: They do compete, my lord, and the basis of this report in putting them together is for that reason. There is no sense of saying these companies sell cotton yarns to other manufacturers unless they sold comparable cotton yarns, and the only yarns that are affected by the discussions between the four companies are 39's and coarser. Now, there are only four companies that took part in discussion about prices of cotton yarns, and there are in that list that I read to your lordship three other companies that sell these cotton yarns as well as the four, and in

mills.

MR. MORRIS: They sell yarns of different classifications than those included in this. Cosmos Industrial are makers of commercial --

MR. WILSON: I am going to ask my friend to put his hands on the evidence for some of this.

MR. MORRIS: I know, but don't confuse us things.

MR. WILSON: My friend is making a lot of general statements.

MR. MORRIS: I simply said -- I repeat and again we are not going into the details of this as if it were a prosecution of them public for a breach of these rules, but when you come to put up a statement that yarns manufactured by Cosmos Industrial were the same as those involved in these public prosecutions why I cannot let that go.

THE COURT REPORTER: Well, either they compete or they do not compete.

MR. WILSON: They do compete, my lord, and the basis of this report is nothing than competition is for that reason. There is no sense of saying these companies sell cotton yarns to other manufacturers unless they sold comparable cotton yarns, and the evidence that I am citing is the Commission's own the four companies are Gw's and correct. Now, there are only four manufacturers that that part in Canada, there gives of cotton yarns, but there are in fact that that I need to pass lightly these other companies that will from cotton yarns or not. If you have, you

addition to that there are other cotton companies whibh manufacture cotton yarns for their own use and if there was anything particularly attractive about the prices for cotton yarns that these four companies were getting then these other companies certainly would be selling.

MR. McRUER: The evidence was, and by one of the witnesses -- it was Mr. Dodd, that the bulk, or practically all of the cotton yarns that were made for sale were made by these companies, these four companies that were parties to the agreement.

MR. KELLOCK: I would think that would make it stronger; if there was anything particularly attractive about the prices these companies were getting then there were other people in the business could have done it, other people who were equipped to do it.

MR. McRUER: Don't you see what would happen if these poor individuals went to work and put up a plant to make cotton yarn to take advantage of this profit these companies were making? The four big companies would drop the prices and put them out of business.

MR. KELLOCK: My friend is suggesting something in that that we would then be committing, we would then commit another criminal offence if we did that, as my friend suggests. That, my lord, is in the teeth of section 498-A.

THE COMMISSIONER: I think you need not prolong the discussion. The point is this, were these four companies producing a product of which they were the

addition to that there are other cotton companies [illegible] cotton yarns for their use and if there was anything particularly attractive about the prices for cotton yarns, at that time four companies were getting than that other companies certainly would be selling.

Mr. [illegible]: The evidence has, and by one of the witnesses -- it was Mr. Hood, that the mill, or practically all of the cotton yarns that were made for sale were made by these companies, these four companies that were parties to the agreement.

Mr. [illegible]: I would think that would make it obvious; if there was anything particularly attractive about the prices these companies were getting then there were other people in the business could have done it, other people who were equipped to do it.

Mr. [illegible]: Don't you see what would happen if these poor individuals went to work and put up a plant to make cotton yarn be take advantage of this [illegible] companies would draw the prices and put them out of business.

Mr. [illegible]: Have we [illegible]

[illegible]

[illegible]

[illegible] the plaintiff to [illegible] manufacturer producing a product of which they were the

sole, or practically the sole manufacturers?

MR. McRUER: That is what Mr. Dodd said.

THE COMMISSIONER: If they were, and entered into an agreement -- I am not passing on the merits of the agreement at all -- if they entered into, we will say, an improper agreement they could not excuse themselves by saying "oh well, that allowed somebody else to start up in business making these same yarns and undersell us". That is no answer. You must take the field at the moment. They are in possession of it, and see what they did with it.

MR. KELLOCK: Mr. McRuer's contention was that these four companies did supply the larger part, the bulk of it --

THE COMMISSIONER: I think they supplied almost all of it.

MR. KELLOCK: I don't think quite, my lord. There were these other companies who were manufacturing yarn for sale, and in addition to these there were imports, principally from Great Britain.

THE COMMISSIONER: Of these very same yarns?

MR. KELLOCK: Of these same yarns.

THE COMMISSIONER: Any large extent of imports?

MR. McRUER: They had a very nice tariff on.

MR. KELLOCK: Answering your lordship's question I don't know that we have separated yarns, 39's and coarser, from the others. I think the figures include them all. That could be done. I am told there is no question at all that the imports did

sale, or practically the sole manufacturers?

Mr. MONDAY: That is what Mr. Judd said.

The COMMISSIONER: If they were, and entered into an agreement -- I am not pasing on the merits of the agreement at all -- if they entered into, we will say, an improper agreement they could not excuse themselves by saying "Mr. Judd, that gentleman came also to start up in business making these same yarns and undersell us". That is no answer. You must take the field at the moment. They are in possession of it, and see what they did with it.

Mr. FITZGERALD: Mr. Commissioner, you know these four companies did supply the lower part, the bulk of it --

The COMMISSIONER: I think they can take almost a of it.

Mr. FITZGERALD: I don't know which, or how. There were many other companies not very substantially yarn for sale, and in addition to these there were imports, principally from Great Britain.

The COMMISSIONER: Of these very same yarns?

Mr. FITZGERALD: Of these same yarns.

The COMMISSIONER: Any large extent or important?

Mr. MONDAY: They had a very nice tariff on.

Mr. FITZGERALD, resuming from Commissioner's Question: I don't know that we have separated yarns, Mr's and connecter, from the others. I think the Tariffs include them all. That could be done. I am sure

include these very same yarns so there wasn't only domestic competition but there was foreign competition, United Kingdom competition as well.

Then, my lord, just two or three other things with regard to my friend's brief. On page 322 my friend refers to a circular sent out on the 19th of July. This refers to full fashioned hosiery, where he says:

".....Mr. Hallam urges all mills to carry out sections 3,4,5,6,7,8,9,10,11 and 13 --"

THE COMMISSIONER: What page?

MR. KELLOCK: Page 322, my lord, at the top.

THE COMMISSIONER: Yes.

MR. KELLOCK: "--sections 3,4,5,6,7,8,9,10, 11 and 13 of the memorandum of May 1st"--

THE COMMISSIONER: Which particular circular does this refer to?

MR. KELLOCK: It refers to full fashioned hosiery. My friend goes on to say:

"The Association, therefore, apparently carried on under the terms of the agreement of May 1st until the fall of 1935"--

Now, everyone of these paragraphs refer to --

THE COMMISSIONER: May 1st what year?

MR. KELLOCK: 1935. Everyone of these sections, my lord, 3 to 13, do not refer to price at all. They refer to these various fair trade practices which I have already discussed with your lordship about advertising and so on. They have got nothing to do --

MR. McRUER: But the agreement referred to prices.

MR. KELLOCK: I know, but the point of this is that there was no agreement as to prices at all at that time. What I am submitting to your lordship is --

THE COMMISSIONER: He urges them to carry out sections 3,4,5,6,7, and so on.

MR. KELLOCK: Which have nothing to do with price, and the circular itself --

THE COMMISSIONER: What was there to carry out then?

MR. KELLOCK: These sections, my Lord, deal with allowances and rebates and marking of seconds and all that sort of thing. That is what the mills were asked to carry out, and that very same exhibit which contains that circular contains another telegram, number 62, which specifically sets out "no agreement with Canadian Silk possible; agreements therefore cancelled".

MR. McRUER: That is part of the negotiations.

MR. KELLOCK: Canadian Silk Products --

THE COMMISSIONER: Who was the man who spoke before us for Canadian Silk Products?

MR. McRUER: Mr. Cooke was the man that gave some long evidence, that we had some difficulty in getting him down to just telling us what took place.

MR. KELLOCK: Well, my lord, I want to mention that. That starts in at the same page.

THE COMMISSIONER: Is he the man who was so angry at somebody else?

MR. BOURKE: But the government referred to prices.

MR. [illegible]: I know, but the point of this is that there was no government as to prices at all at that time. What I am submitting to your Lordship is --

THE COMMISSIONER: He wants them to carry out sections 3,4,5,6,7, and so on.

MR. [illegible]: Which have nothing to do with prices and the circular itself --

THE COMMISSIONER: What was there to carry out?

MR. [illegible]: These sections, my Lord, deal with dishonest and improper dealing of brokers and all that sort of thing. That is what the mills were asked to carry out, and that very case which [illegible] [illegible] = Mr. [illegible] will not be expected with Canadian milk possible; representing [illegible] [illegible].

MR. [illegible] is part of the [illegible].

MR. [illegible]: [illegible] --

THE COMMISSIONER: Who was the [illegible] before us for Canadian milk producers?

MR. BOURKE: Mr. Cooke was the man that gave some long evidence, that we had some difficulty in getting him down to just telling us what took place.

MR. [illegible]: Well, my Lord, I want to [illegible] that. That appears in at the same page.

THE COMMISSIONER: Is he the man who was so angry at somebody else?

MR. McRUER: Yes.

THE COMMISSIONER: For not observing some gentlemen's agreement.

MR. McRUER: And then he maintained there wasn't an agreement.

THE COMMISSIONER: An agreement supposed to be arrived at at a certain conference which afterwards he said he did not attend.

MR. KELLOCK: He said he was there.

MR. McRUER: He said he was there, but they didn't agree. There was no agreement but he was writing letters chastising people for selling below it.

THE COMMISSIONER: I remember his evidence very well.

MR. KELLOCK: My friend starts to deal with that at the foot of page 322, and it doesn't matter very much in my submission what view your lordship takes of that evidence. The situation was this, that that meeting that was referred to was in May of 1936, and Mr. Cooke, who gave evidence, certainly was under the impression, the very definite impression, that so far as the Gotham people he complained about later, that they certainly had agreed on prices at that time with him and he expresses that in his letters.

THE COMMISSIONER: Yes.

MR. KELLOCK: Your lordship has that in mind.

THE COMMISSIONER: If his evidence and letters had coincided I would have understood something.

Mr. [illegible]:

THE COMMISSIONER: Not not observing some particular's agreement.

MR. [illegible]: and then be [illegible] the agreement.

THE COMMISSIONER: An agreement supposed to be arrived at at a certain conference with [illegible] he said he did not attend.

MR. [illegible]: He said he was there.

MR. [illegible]: He said he was there, but they didn't come. There was no agreement but he was writing letters classifying people for selling below it.

THE COMMISSIONER: I remember his evidence very well.

MR. [illegible]: My friend wants to deal with that at the foot of page 382, and it doesn't matter very much in my examination what view your Lordship takes of that evidence. The situation was this, that the meeting that was referred to was in May of 1936, and Mr. Cooke, who gave evidence, certainly was under the impression, the very definite impression that so far as the cotton people he considered above issues, that they certainly had agreed on prices at that time with him and he expressed that in his letters.

THE COMMISSIONER: Yes.

MR. [illegible]: Your Lordship has that in mind.

THE COMMISSIONER: If his evidence was letters had coincided I would have understood something.

MR. KELLOCK: Now, my lord, I am not going to try in any way to reconcile that.

THE COMMISSIONER: His letter says yes and his evidence says no.

MR. KELLOCK: All I say about that is this, if there was any such agreement it was in force only for a short time because if your lordship refers to Mr. Cooke's letter of the 3rd of July following, which is part of exhibit 793, your lordship will see that this letter shows that any such agreement was not lived up to for any length of time.

MR. McRUER: The letter says:

" Unless the Association is able to put a stop to these practices we intend to set upm our own price structure and we would ask you to be kind enough to give the various members fair warning that we intend to do this. We have been extremely considerate in holding back notwithstanding the underselling"--

THE COMMISSIONER: There is no doubt in that letter that there was a price structure that he was supposed to adhere to, or he was adhering to and that he was threatening to depart from unless the thing was done by the Association as a whole.

MR. McRUER: I don't know what he means by the next line --"but we do not intend to continue to take it on the chin".

MR. KELLOCK: There is this fact that the evidence showed on the 19th of July there was a further meeting with an attempt to set up an agreement and the express

Mr. [illegible]: Now, my lord, I am not going to try in any way to reconcile that.

THE COMMISSIONER: His letter says yes and his evidence says no.

Mr. [illegible]: Sir, I say those that is true, if there was any such agreement it was in force only for a short time because if your lordship refers to Mr. Cooke's letter of the 3rd of July following, which is part of exhibit 783, your lordship will see that this letter shows that any such agreement was not lived up to for any length of time.

Mr. [illegible]:

" Because the association is this: I put a stop to these questions we intend to not use our own police attorneys and we could ask you to be kind enough to give the various reasons to this [illegible] that we intend to do this. We have been extremely considerate in dealing [illegible] the [illegible]."

Mr. [illegible]: There is no doubt in that letter that there was a police attorney that he was supposed to address to, or he was attending to and that he was threatening to depart from unless the thing was done by the association as a whole.

Mr. [illegible]: I don't know what to make of this by the [illegible] on the coin".

Mr. KEMPCH: There is this fact that the evidence showed on the 19th of July there was a further meeting [illegible]

evidence is they did not get anywhere so that the agreements ceased,so far as full fashioned hosiery is concerned,at that time.

THE COMMISSIONER: Before you go any further are you finishing to-day?

MR. KELLOCK: My lord, I cannot finish to-day but I hope to finish to-morrow.

THE COMMISSIONER: Then, we will take a recess.

-- The Commission adjourned for a short recess.

(page 17345 follows)

-- On resuming at 4.10 P.M.

MR. KELLOCK: My lord, I cannot usefully add anything to the subject we were discussing and I want to pass on to something else as concisely as I can.

On page 218 of my friend's brief my friend sets out there the basis for his contention that the Dominion Woollens and Worsteds is sort of an a basis by itself and it is not to be included with the other companies for comparative purposes, and that case is entirely, as your lordship recalls, based, as my friend says, on Exhibit 1060 which is a report or a letter written by Mr. Evans to the Company setting out Mr. Evans' views in regard to the Company.

Now, Exhibit 1061 is the Company's answer which denies Mr. Evans' contention and my submission is that your lordship could not be asked to try an issue of this kind on affidavits.

THE COMMISSIONER: What is the issue between them again, shortly?

MR. KELLOCK: What is the issue? Mr. Evans makes a whole lot of charges.

THE COMMISSIONER: What are they?

MR. KELLOCK: Oh, he covers a variety of subjects, mylord. He says that the company employs too large a clerical staff. If they employed less they would do a lot better. That their machinery of ascertaining what their costs are are very ponderous and takes a long time to get it back to the head office.

and he gives his ideas as to why the company has experienced a loss on the various years. He says that it is due to obsolete merchandise and he charges bad management and that sort of thing. In exhibit 1061, the Company answers Mr. Evans' completely, and my submission is, as I say, that your Lordship could not try an issue of that kind on affidavits any more than your lordship could try it on letters. I submit that this company is one of the largest companies in that branch of the industry. It cannot be eliminated from consideration if a proper view is to be obtained onthe industry, and my friend's whole case in asking your lordship to eliminate it from consideration is based on this letter of Mr. Evans which, as I say, is contradicted ---

MR. McRUER: Oh, no.

THE COMMISSIONER: That cannot be right. There is the very fact of the company itself, its origin- everything else is before me besides what Mr. Evans said. According to you Mr. Evans' criticism is rather on matters of management.

MR. KELLOCK: I am quite satisfied if your lordship judges the company other than on Mr. Evans.

THE COMMISSIONER: I say the companyitself, though, has intrinsic features that have to be taken into consideration.

MR. McRUER: A merger of four other companies,

and he gives his views as to why the company has experienced a loss on the various years. He says it is due to obsolete methods and he charges bad management and that sort of thing. In fact his the Company answers Mr. Evans' completely, and my conclusion is, as I say, that your Honour could not try on issue of that kind on affidavits any more than your Honour could try it on letters. I submit that this company is one of the largest companies in that branch of the industry. It cannot be eliminated from consideration. If a proper view is to be obtained of the industry, and my friend's whole case is asking your Honour to eliminate it from consideration is based on this letter of Mr. Evans which, as I say, is contradicted ---

MR. MOFFAT: Oh, no.

THE COURT - I SAY: That cannot be right. There is the very fact of the company itself, its origin- everything else is before us besides what Mr. Evans said. According to you Mr. Evans' criticism is rather on matters of management.

MR. MILLER: I am quite satisfied if your Honour judges the company other than on Mr. Evans.

THE COURT - I: I say the argumentative, the inflammatory features that have to be taken [illegible]

[illegible]

certainly one of them which had been very profitable and prosperous until the time ---

MR. KELLOCK: I am speaking only of Mr. Evans' report. Then, my lord, at page 355 of my friend's brief, it argues very largely from a very narrow basis in regard to tax concessions which some of these companies have had and my friend makes the statement that individual companies engaged in the industry have with few, if any, exceptions received advantages over the ordinary tax payers. Now, I do not recall any other companies other than the ones which were perhaps dealt with here most particularly, - that is, where your lordship attended at their places of business, and I don't know that there is any evidence - I certainly have not seen any evidence of a wide-spread character as to tax concessions to the other companies, some 400 companies or more, and my criticism of my friend's statement there is that it is too broad a statement from the narrow base from which it starts. Then, my lord, on pages 416 and following pages my friend deals with the subject of costs of production, which he also deals with on pages 247 and following pages, and on page 416, at the bottom, my friend makes a charge which I submit is quite unfounded and I should like to deal with it. My friend says "On this occasion," - that is in connection with the hearing before the Tariff Board, Reference 83 ---

THE COMMISSIONER: I understand under the new Treaty

certainly one of them which had been very profitable and prosperous until the time ---

Mr. Lafleur: I am speaking only of Mr. Jones' report. Then, my lord, at page 245 of my friend's brief, it argues very largely from a very narrow basis in regard to tax assessment allocations of these companies have had and my friend makes the statement that individual companies engaged in the industry have with few, if any, exceptions received advantages over the ordinary tax payers. Now, I do not recall any other companies other than the ones which very perhaps dealt with here most particularly - that is, where your lordship attended at their places of business, and I don't know that there is any evidence I certainly have not seen any evidence of a widespread character as to tax concessions to the other companies, some 400 companies or more, and my criticism of my friend's statement there is that it is too broad a statement from the narrow base from which it starts. Then, my lord, on pages 246 and following pages my friend deals with the subject of costs of production, which he also deals with on pages 247 and following pages, and on page 248, at the bottom, my friend makes a charge which I submit is quite unfounded and I should like to deal with it. My friend says a "fair conclusion" - and I am quoting with his [illegible] ---

Mr. Fraser: I understand after the last [illegible]

there are to be no more hearings before the Tariff Board.

MR. McRUER: That is right.

MR. KELLOCK: As I read the Agreement there was provision in there for audience to the ---

THE COMMISSIONER: We had the agreement filed, have we not?

MR. KELLOCK: Yes, my lord. There is a provision in there. My copy seems to have got mislaid.

MR. McRUER: I cannot recollect it. There is a copy. My impression was that there was no provision in regard to the Tariff Board in the new Agreement.

MR. KELLOCK: Well, I had something in my mind. What I had in mind was the last part of Article 6, which does not mention the Tariff Board specifically but this is what it says:

> "The Government of Canada undertakes as regards goods the growth, produce or manufacture of the United Kingdom other than those enumerated in Schedule 4, that, under the British Preferential Tariff, no new protective duty shall be imposed and no existing protective duty increased except after an inquiry at which United Kingdom producers shall enjoy full rights of audience."

Does not mention the Tariff Board.

THE COMMISSIONER: No, as you have been saying, "I have been instructed." There is no reference to the Tariff Board.

MR. KELLOCK: No, no reference unless that is intended

there are to be no more hearings before the Tariff Board.

MR. MORDEN: That is right.

MR. KELLOCK: As I read the Agreement there was provision in there for evidence to the ---

THE COMMISSIONER: He had the agreement filed, have we not?

MR. KELLOCK: Yes, my lord. There is a paragraph in there. My copy seems to have got mislaid.

MR. [illegible] [illegible] copy. My impression was that there was no provision in regard to the Tariff Board in the new Agreement.

MR. KELLOCK: Well, I was something in my mind that I had in mind was the last part of Article 6, which does not mention the Tariff Board specifically but talks in such it says:

"The Government of Canada undertakes to remove as regards goods the growth, produce or manufacture of the United Kingdom other than those enumerated in Schedule A, that, under the British Preferential Tariff, no new protective duty shall be imposed and no existing protective duty increased except after an inquiry at which United Kingdom producers shall enjoy full rights of audience."

Does not mention the Tariff Board.

THE COMMISSIONER: No, as you have been saying, "I have been instructed." There is no reference in the Tariff Board.

MR. KELLOCK: No, no reference whatever. I [illegible]

MR. McRUER: It would be quite possible yet, though, if any question came up between the producers in the United Kingdom and the Governmentof Canada for the Minister of Finance to refer the matter to the Tariff Board under the general provisions of the Tariff Board Act.

THE COMMISSIONER: Yes, the Governor in Council and the Minister of Finance can do what they like with the Tariff Board but the old Treaty gave a positive right to the British people to come to the Tariff Board and ask to have a case heard.

MR. McRUER: And I think there is a very important fundemental difference between the old treaty and this Treaty now on the abolition of that provision because the two bases on which they could come and on which the Tariff Board must act was the relative cost of production in order to assure reasonable competition. Now, that basis is abolished as far as I can see because when you consider that basis you eliminate the whole question of the economic welfare of the Dominion as to whether an industry ought to be supported even though the Tariff may be necessary having regard to the relative cost of production in Canada. For instance, you may have an industry manufacture something and we would be far better off importing that article, but on the basis of the relative cost of production in Canada the Tariff Board's hands would be tied.

Mr. Meighen: It would be quite possible yet, though if any question came up between the producers in the United Kingdom and the Government's demands for the Minister of Finance to refer the matter to the Tariff Board under the general provisions of the Tariff Act.

Mr. Coldwell: Yes, the Governor in Council and the Minister of Finance can do what they like with the Tariff Board but the old Treaty gave a positive right to the British people to come to the Tariff Board and ask to have a case heard.

Mr. Meighen: And I think there is a very important fundamental difference between the old treaty and this Treaty now on the abolition of that provision because the two bases on which they could come and in which the Tariff Board had not was the relative cost of production in order to secure reasonable competition. Now, that basis is abolished so far as I can see because when you consider that basis you eliminate the whole question of the economic welfare of the Dominion as to whether an industry ought to be supported even though the Tariff may be necessary having regard to the relative cost of production in Canada.

Now Gentlemen, you may show to Gentlemen manufacturing according and so on, in the matter of increasing their activity, but no one dreamed in the original idea of protection in Canada that Tariff protection should not be.

THE COMMISSIONER: And the Government's hands would be tied.

MR. McRuer: That is eliminated and a far broader and I think a very much wiser principle underlies this Treaty, and that is the general welfare of the two countries.

THE COMMISSIONER: However, I just raised the point now, Mr. Kellock, because you were dealing with something pending before application is made to the Tariff Board under the old Treaty. It may all be academic now.

MR. KELLOCK: Only this, that my friend makes a charge of misrepresentation against my client and which I submit is unfounded, and that is the only objectof it. Aside from that, as your lordship says, it is quite academic, but my friend does make a charge there which I submit is quite unfounded. My friend says that we put before the Tariff Board the costs of production of different fabrics in Canada. Now, that is important. "The costs that were put before the Board were represented to be the actual costs of production in Canada. It, however, transpired during this investigation that they were not the actual costs of production,-- " That is, "they" that is, the ones put before the Tariff Board. "....that they were not the actual costs of production, but were what are called standard costs of production." And then he goes on to talk about them.

the Constitution; and the Government's hands would be tied.

Mr. MURPHY: That is eliminated and a far proper and I think a very much wiser principle underlies this treaty, and that is the general welfare of the two countries.

Mr. CHARLTON: However, I just raised the point now, Mr. Chairman, because you were dealing with something pending before Legislation is made to the Tariff Board under the old Treaty. It may all be academic now.

Mr. MALCOLM: Only this, that my friend means a charge of misrepresentation against my client and which I submit is unfounded, and that is the only objection I take from that, as your lordship says, it is quite academic, but my friend does make a charge there which I submit is quite unfounded. My friend says that we put before the Tariff Board the costs of production of different fabrics in Canada. Now, that is important. "The costs that were put before the Board were represented to be the actual costs of production in Canada. It, however, transpires [illegible] that they were not the actual costs of production.— That is, "Many cases in [illegible] only [illegible] costs. "[illegible] were not the actual costs of production, but [illegible] costs of [illegible]."

[illegible] to talk about them.

Now, I think it is important, my lord, to show just what my friend discussed with Mr. Loper, and then just show what Mr. Loper did put before the Board. I refer to the evidence at page 1805, line 2, where my friend is examining Mr. Loper:

"Q. But did you prepare and submit to the Tariff Board the costs of each individual mill or did you make it one uniform statement of costs and submit it that those are the costs of the textile industry of Canada. A. I am not sure that I can answer the question. We had the data specifically by mills and whether just Sedgwick asked for it in that form or not I don't know.

Q. Did you not give the evidence?

A. We gave the evidence.

Q. But did you not yourself give the evidence?

A. Part of it.

Q. You surely know on what basis you gave the evidence before the Tariff Board last fall?

A. The evidence which I gave personally was as to the method used in developing the costs. One of my associates remained over practically for days after I left and I do not personally know just the form in which Judge Sedgwick finally agreed he wanted the figures, but they were developed individually by mills and if Judge Sedgwick wanted it that way it was available to him that way.

Mr. (Bailey is by unanimous, my lord, to have
plan been so fairly discussed with Mr. Logan, and
just show what Mr. Logan did put before the board.
I refer to the evidence at page 1888, line 8, where
he (Mr. Bailey) is examining Mr. Logan:

"Q. But did you prepare and submit to the Tariff
Board the costs of each individual mill or did
you base it on uniform assessment of costs and
submit it that these are the costs of the
textile industry of Canada. A. I am not
sure that I can answer the question. To put the
data specifically by mills and whether just recog-
nition asked for it in such form or not I don't know.
Q. Did you not give the evidence?
A. We gave the evidence.
Q. But did you not yourself give the evidence?
A. Part of it.
Q. You surely know on what basis you
gave the evidence before the Tariff Board?
A. The evidence which I gave personally was as
to the method used in developing the costs.
One of my associates remained over practically
for days after I left and I
do not personally know just the form in which
the Judges finally approached the Tariff
but they were envisaged individually by Mills
and if they judging based it that and it
was available to the Board.

Q. Then you have at the present time in your possession available to summit to us the costs individually by mills in respect to certain specific articles of manufacture."

Now, he is dealing, as my friend says in his brief, with certain definite fabrics.

THE COMMISSIONER: The only point is is he dealing with actual costs, or standard costs. Mr. McRuer's charge, as I read it here, is that the standard costs were represented to be actual costs.

MR. KELLOCK: What I am coming to is this, my lord. That there is not such a thing as actual cost if a particular article such as a yard of cloth costs, as Mr. Howson explained it - I refer your lordship to his evidence - you cannot get exactly to an exact basis just the cost of everything that is included in the yard of fabric, such as soap, machinery, oil, and all that sort of thing. The very best you can do is to take the experience of the company as to its entire output, and estimate as best you can on the basis of that experience what the cost of an article of fabric is, and that is what is called a standard cost. Now, what Mr. Loper put before the Tariff Board was the experience of all these companies as to the cost of the particular fabrics which were being considered before the Tariff Board and Mr. Loper explained to the Board exactly what it was that he was putting before the Board.

4. Then you have at the present time in your possession available to enable you to the costs individually by mills in respect to certain specific articles or manufactures."

Now, he is saying, as my friend says in his brief, with certain definite fabrics.

The [illegible]: The only point is he defining [illegible] charge, as I read it here, is that the actual costs were represented to be actual costs.

Mr. [illegible]: What I am trying to do this, my lord, that there is not such a thing as actual cost if a different article been as a yard of cloth costs, as Mr. Monson explained it - I refer your lordship to his evidence - you cannot get exactly to an exact basis just the cost of everything that is included in the yard of fabric, such as soap, machinery, oil, and all that sort of thing. The very best you can do is to take the experience of the company as to its entire output, and estimate as best you can on the basis of that experience what the cost of an article of fabric is, and that is what is called a standard cost. Now, what Mr. Loper put before the Tariff Board was the experience of all these companies as to the cost of the particular fabrics [illegible] Mr. Loper explained to the Board exactly what it was that he was putting before the Board.

It does notmatter whether you call it actual costs or standard costs, and I don't know that, in the evidence as to what was laid before the Board, other language appears. I was proposing to call your Lordship's attention to the actual evidence, but, whether they called it standard costs or actual costs, Mr. Loper put before the Board what he had and he told the Board what it was.

Now, when we come to your lordship's enquiry, what is sent out to the companies on this subject matter are pages 14a and (b), ---

THE COMMISSIONER: That is in this Inquiry?

MR. KELLOCK: Yes, and 14a deals with the company making yarns and grey goods, &c., and 14b deals with the hosiery, underwear and knit goods companies, and right at the top of 14-a what is asked for is "Mill production and operating account for the fiscal year ending _____ on standard costs basis." In other words, my lord, I am a manufacturer, I am asked to set out - it does not matter how many lines I am making. Some of these companies make many thousands of different lines of goods - I am asked to set out my standard costs for each individual article I make, on this page. And then at the bottom I am asked to give the total. The question is "Total applied on standard costs basis." Then I am asked to give my "Total actual cost as per profit and Loss Account." That is, my total actual

I'm sorry, I don't remember whether you call it cotton goods or standard goods, and I don't know that, in the evidence as to what was said before the Board, other language appears. I was proceeding to call your Lordship's attention to the actual evidence, and, whether they called it standard goods or cotton goods, Mr. Lower put before the Board that he had one to hold the cotton at 12c.

Now, when he came to your Lordship's country, that is sent out to the companies on this subject matter [illegible]:

MR. COSGRAVE: That is in this Inquiry.

MR. HELLUOK: Yes, and has dealt with the company making yarns and grey goods, so, and has dealt with the industry, underwear and knit goods companies, and right at the top of 14-a that is asked for is "Will production and operating account for the fiscal year ending _____ be standard costs."

In other words, my Lord, I am a small owner, I am asked to set out - it does not matter how many lines I am making. Some of these companies make many thousands of different lines of goods - I am asked to set out my standard costs for each individual article I make, on this page. And then at the bottom I am asked to give the total. The question is "Total supplies on standard costs basis." Then I am asked to give my "Total actual-cost on [illegible] and less [illegible]." That is, the Board [illegible]

costs on all my lines. Now, a company answers this on the basis on which it is asked. They set out the individual standard costs for the individual articles. It is totalled up below th at the actual costs of all the lines, the total output is put there because you cannot give for the reason I explained and it is not asked for, the actual cost on the individual line, and you can compare the total . The result of that ---

THE COMMISSIONER: The actual that you arrive at there, then, is the result of the standard.

MR. KELLOCK: No, the actual, my lord, is every dollar that I spend in costs and the result is that one cannot compare the total actual with the total standard, but you cannot say whether a single standard cost which I have set out there is right or wrong.

THE COMMISSIONER: Then how do you know how much money to put aside for costs? You see, I asked you how you interpreted that question there about the total actual cost and you say means so many dollars, actual dollars.

MR. KELLOCK: Yes.

THE COMMISSIONER: How do you arrive at these actual dollars?

MR. KELLOCK: It says, "As per profit and loss account," and I go to my profit and loss account and find out my total expenditure in turning out my merchandise during the year, and that is the total

costs on all my lines. Now, a company answers this on the basis on which it is asked. They s t out the individual standard costs for the individual articles. It is totalled up below th at the actual costs of all the lines, the total output is put there because you cannot give for the reason I explained and it is not asked for, the actual cost on the individual line, and you can compare the total.

The result of that ---

THE COMMISSIONER: He stated that you arrive at there, then, is the result of the standard.

MR. MILLOCK: No, the actual, my lord, is every dollar that I spend in costs and the result is that one cannot compare the total actual with the total standard, but you cannot say whether a single standard cost which I have set out there is right or wrong.

THE COMMISSIONER: Then how do you know how much money to put aside for costs? You see, I asked you how you interpreted that question there about the total actual cost and you say means so many dollars, actual dollars.

MR. MILLOCK: Yes.

THE COMMISSIONER: How do you arrive at these actual dollars?

MR. MILLOCK: It says, "as per profit and loss account," and I go to my profit and loss account and find out my total expenditure in turning out my commodities during the year, and that is the total

cost of fabricating that line. Now, the result of that set full out is simply, as I say, that one cannot compare total standard with the total actual, but it will not show in any particular case whether the particular standard costs of a particular fabric is right or wrong. You can only form a judgment as to how near the standard costs are to reality with regard to any particular article by saying what your total is and what your total is as compared with your actual.

THE COMMISSIONER: What use do you make of your standard costs? I mean, in the figure that is set aside, what use do you make of it?

MR. KELLOCK: My making use of it is the most intelligent basis I can get as to what a particular article costs me to make of what I ought to get. That is the practical use.

THE COMMISSIONER: In arriving at your selling price?

MR. KELLOCK: Yes.

THE COMMISSIONER: Sometimes the actual cost might be more and sometimes less.

MR. KELLOCK: Yes. We have only one illustration before your lordship as to the working out of that. My friend sets that out in his brief at page 247, and your lordship will just see there how it worked out in this particular case. Page 248 ---

MR. McRUER: It is true there was only two mills that we could make any such calculation.

cost of fabricating that line. Now, the result of that set full out is simply, as I say, that one cannot compare total expended with the total actual, but it will not show in any particular case whether the particular expended costs of a particular route is right or wrong. You can only form a judgment as to how near the expended costs are to really what ought to any particular article by saying that your total is and that your total is as compared with

[illegible].

MR. [illegible]: What can be your idea of your expended costs? I mean, in the figures that in set aside, what use do you make of it?

MR. KEMPTON: My reading use of it is the most intelligent basis I can get as to what a particular article costs me to make of what I ought to get. That is the practical use.

[illegible]

MR. [illegible]: Sometimes the total cost will be more and sometimes less.

MR. KEMPTON: Yes. We have only one illustration before your lordship as to the working out of that. My friend says that out in his brief at page 44, and your lordship will just see there how it worked out in this particular case. [illegible]

MR. MOUNT: It is true there was only two mills that we could make any such calculation.

MR. KELLOCK: At the foot of the page my friend sets out the results in the case of the Penman Company. The total standard cost of all the company's output and total actual cost is set out there for each year. And, as pointed out earlier, there are only two years, 1932-1933 where the standard costs were too high. Now, I should amend what I said ---

THE COMMISSIONER: Too low?

MR. KELLOCK: No. These figures are not standard costs, they are not actual costs. Going back to the preceding sentence: "The following statement is a comparison of the net profits on the basis of standard costs and actual costs...."

THE COMMISSIONER: That reverses the meaning.

MR. KELLOCK: "....and actual costs for this ten-year period." So that ---

THE COMMISSIONER: These are not costs figures, these are profit figures.

MR. KELLOCK: Yes, my lord. So that in every year except 1932 and 1933 the company's actual cost was greater than the standard cost and in 1932 and 1933 the standard costs were too high but, as Mr. Howson said in his cross-examination, if you took the difference in net profits between the two and attempted to throw it back .... you get an infinitesimal difference. So that my submission is, my lord, ---

THE COMMISSIONER: You were referring to a certain page of evidence, Mr. Loper's evidence, what page?

Mr. Ahearn: At the foot of the page my friend sets out the results in the case of the Canada Company. The total standard cost of all the company's output and total actual cost is set out there for each year. And, as pointed out earlier, there are only two years in-which where the standard costs were too high. Now, I should amend what I said ---

The Commissioner: Too low?

Mr. Ahearn: ... These standard costs, they are not actual costs. Going back to the preceding sentence: "The following statement is a comparison of the net profits on the basis of standard costs and actual costs...."

The Commissioner: That increases the results.

Mr. Ahearn: "... and actual costs for this two-year period." ---

The Commissioner: These are not those figures, these are standard figures.

Mr. Ahearn: Yes, my lord. So that in every year except 1933 and 1934 the company's actual cost was greater than the standard cost and in 1933 and 1934 the standard costs were too high but, as Mr. Hosmer said in his cross-examination, if you took the difference in net profits between the two and attempted to throw it back .... you get an infinitesimal difference, so that my submission is, my lord, ---

The Commissioner: The most interesting in [illegible] year at [illegible], Mr. Ahearn's [illegible], that point

MR. KELLOCK: I was reading from 1805, line 10 to 1806, line 7, and 1850, line 24, to 1817, line 25. That shows what Mr. Loper was dealing with and then he said that the costs that he gave were based on the actual figures of the preceding year. That is, they took the Companies' experience. That evidence, my lord, is included in the last reference I gave your lordship, and also on page 1818, line 30, to 1819, line 1, Mr. Loper explained his method of costing in the evidence at page 1831, line 13, page 1840 to line 31, and he said he explained that to the Tariff Board and he said that on page 1826, lines 16 to 23. Then I just refer your lordship to Mr. Howson's evidence as to the fact that you cannot get anything but a standard cost for an individual fabric. That is on page 12945, line 1, to page 12951, line 8.

Then, my lord, at page 420 of my friend's brief he refers to a letter of the 4th of November, 1935, written by Mr. Whitehead to the Cotton Institute. It is part of Exhibit 623. It is really written to Mr. Berry. That letter, as your lordship sees, is in response to a letter written by Mr. Berry on October 31st, the same year. Now, Mr. Berry's letter had set out a draft of a proposed letter which Mr. Berry proposed to write to the Tariff Board setting out certain information with regard to yarn. In this letter of Mr. Whitehead's, Mr. Whitehead

Mr. KILLOCK: I was reading from line 1, page 10, line 10, line 7, and line 1, line 24, to page 11, line 20, that shows what Mr. Loper was dealing with and was said that the costs that he gave were based on the figures of the preceding year. Just as, may took the commercial experience. That evidence, my Lord, is included in the last reference I gave your Lordship, and also on page 1443, line 30, to 1444, line 1.

Mr. Loper explained his method of costing in the evidence at page 1441, line 1, page 1440 to line 31, and he said he explained that to the Board. I mean and he said that on page 1440, lines 15 to 20.

Then I just refer your Lordship to Mr. Moscovitch's evidence as to the fact that you cannot get anything but a standard cost for an individual table. That is on page 1444, line 1, to page 1445, line 2.

Now, in some, of course due to my friend's method as refers to a letter of the 4th of [illegible], line, written by Mr. Whitehead to the Ontario Legislature. It is part of Exhibit 604. It is really written to Mr. Berry. That letter, as your Lordship sees, is in response to a letter written by Mr. Berry on [illegible] 5th, [illegible], and Mr. Berry in letter had set out a draft of a proposed letter which Mr. Berry proposed to write to the Board [illegible] giving the certain information with regard to [illegible] of the Ontario Hydro-Electric Commission.

objects to that information being put before the Tariff Board. Mr. Berry's letter was sent out to a number of other people in the industry besides Mr. Whitehead and these other people reply to Mr. Berry and said "Put the information before the Tariff Board."

MR. McRUER: Are there any letters to that effect?

MR. KELLOCK: Yes, they are all in the Exhibit and the evidence was put before the Tariff Board, and Mr. Berry's letter is dated 7th December, 1935. So that whatever Mr. Whitehead objected to it was not given affect to, and the information was putbefore the Tariff Board.

THE COMMISSIONER: What Exhibit do you say?

MR. KELLOCK: Exhibit 623, my lord. The letters I have referred to are all there.

Then the only section that I have not referred your lordship to in my Factum as yet is - there are two really - the last one is very short. The last two sections of my Factum, my lord, is Section I, dealing with the "Consumer " and in the last one I have certain "submissions" to make.

THE COMMISSIONER: He is the long forgotten man.

MR. KELLOCK: Yes, my lord.

"There has been no computation place before the Commission as to the total cost in dollars and cents to the consumer of any tariff rate. There is no evidence that prices of textiles in Canada are out of line with prices of other com-

[illegible] Mr. Berry's letter was sent out to a number of other people in the industry besides Mr. Whitehead and these other people reply to Mr. Berry and said "At the information before the Tariff Board."

Mr. Whitehead: Are there any letters to that effect?

Mr. Pelletier: Yes, they are all in the Exhibit and the evidence was put before the Tariff Board. And Mr. Berry's letter is dated 7th December, 1929, so that whatever Mr. Whitehead objected to it was not given effect to, and the information was submitted the Tariff Board.

THE COMMISSIONER: Were Exhibit 3 to you say?

Mr. Pelletier: Exhibit 3, my Lord. The letter I have referred to are all there.

Then the only section that I have not referred yet - I am forbidding to in my Factum as yet is - there are two really - the last one is very short. The last two sections of my Factum, my Lord, is Section I, dealing with the "Consumer" and in the last one I have certain "submissions" to make.

THE COMMISSIONER: He is the long forgotten man.

Mr. Pelletier: Yes, my Lord.

"There has been no computation place before the Commission as to the total cost to Canada and Ontario in the consumer of any Tariff rate. There is no evidence that either Canada or Ontario con-

modities and services. There is however, evidence showing that the presence in Canada of the textile industry has an effect in keeping down the cost to the ultimate consumer of the imported article by reason of the competition furnished by the domestic industry to imported goods. It is clear from the evidence that the distributor expects and obtains where possible a higher mark-up on imported goods than on goods which have been produced in Canada and the presence of the competition furnished by the domestic industry has a limiting effect on thd cost of the imported goods to the ultimate consumer."

THE COMMISSIONER: Of course, you must remember, though, that in considering the questions before us the imported goods bear the weight of the tariff entirely. The imported goods can come in only over the tariff, and you are operating behind the tariff. The argument is not the same when you are working with a tariff fence. It protects you that the others cannot climb over.

MR. KELLOCK: My point is ---

THE COMMISSIONER: I understand your point is ---

MR. McRUER: I do not understand what my friend means. I may be a little dense on it.

"There is however, evidence showing that the presence in Canada of the Textile Industry has an effect in keeping down the costs to the ultimate consumer of the

imported article by reason of the competition furnished by the domestic industry to imported goods."

THE COMMISSIONER: He means, if the tariff was there and there was no domestic industry, well then, the consumer here would be at the mercy of the outside importer. They would have to buy outside.

MR. McRUER: Would have no competition with the outside, with Japan, for instance.

MR. KELLOCK: No, that is not the point.

THE COMMISSIONER: No, if the tariff was there as it is to-day, if no home industry, the consumer would have to buy all his goods in Japan or the United States or other places and they would all come in here over the tariff wall as there was nobody inside Canada able to sell at less than the height of the tariff.

MR. McRuer: I am afraid that government would not last long.

THE COMMISSIONER: You assume in that sort of argument- here is tariff wall. Now, you ought to be thankful we are here behind it, otherwise you pay more. That is not the sequence of events, the tariff wall is here because you are here.

MR. KELLOCK: Would not the same thing be true if you had any tariff wall around. You would be exactly at the mercy of the outside competition and the fact that I am here on the ground furnishing these goods keeps down the prices of the foreign goods. That is exactly the point.

MR. McRUER: You mean you could undersell the foreign manufacture even without the tariff?

MR. KELLOCK: My friend chooses to misunderstand me.

MR. McRUER: That must be the logical conclusion.

MR. KELLOCK: No, that is not the argument at all.

THE COMMISSIONER: However, in order to brush the cobwebs aside, you are not arguing this: If we had no tariff at all on textiles that our textiles would be dear in Canada?

MR. KELLOCK: No. The other point is this: That the evidence shows that imported goods bear or receive in any event or have placed on them a higher mark-up by the distributor than the domestic ones.

HE COMMISSIONER: That may be. They had to pay a tremendous amount of duty.

MR. KELLOCK: No higher markup, higher spread between cost and selling price.

MR. McRUER: That is becausethe importers have to maintain buyers, &c. That is a protection that you have irrespective of the tariff. May have to look after buyers.

THE COMMISSIONER: I think you had better go on.

MR. KELLOCK: "Where any particular duty is decreased the evidence shows that this does not mean that the extent of the decrease is co-extensive with the extent of the benefit to the consumer. According to Exhibit 440 the retail selling organization there in question shows the following

mark-ups on Japanese goods:

1. During the entire calendar year 1935 70%"

THE COMMISSIONER 70% of what?

MR. KELLOCK: 70% added to costs.

THE COMMISSIONER: You mean added to cost of laying the article down in Canada?

MR. KELLOCK: Yes, to that particular concern. January to June 11th, 1935, it was 68% and January to June 11th, 1936, it was 74%.

THE COMMISSIONER: Did those figures, though, still enable those people to compete with you, with the home products?

MR. KELLOCK: They are still.

THE COMMISSIONER: They must have otherwise they would not be here.

MR. KELLOCK: This is what they brought in and this has the mark-up that they put on them:

"It therefore appears that one result of the reduction in duties on Japanese importations made on the 1st of January 1936, was an increased mark-up so far as this particular organization was concerned, to the extent of 6% over the corresponding period in the previous year."

And that was not necessarily passed on to the Consumer. It was not all passed on because to the extent of 6% it was simply additional mark-up to the distributor:

"Another aspect of the cost to the consumer of a tariff is the extent to which the tariff by in-

Mr. Chairman and Gentlemen:

1. During the entire calendar year 1946 Vegi-
The Commissioner Egg of what?

Mr. Kelley: 70% added to costs.

The Commissioner: You mean added to cost of laying
hen activity per dozen.

Mr. Kelley: Yes, in that particular instance.

January to June 11th, 1946, it was 38% and January
to June 11th, 1946, it was 74%.

Mr. Kelley: Mr. Chairman, Honour, will
anybody those people to compete with you, with the
same producer:

Mr. Kelley: They are still.

The Commissioner: They must have calculated they
would not be here.

Mr. Kelley: This is what they brought in and
then was the mark-up that they put on them:

It therefore appears that the result of the
[illegible] by [illegible] Supervisor [illegible]
on the 1st of January 1946, was an increase
mark-up so far as this part-time order organization
was concerned, to the extent of 38% over the
corresponding period in the previous year."

And that was not necessarily passed on to the Consumer.
It was not all passed on because to the extent of
38% it was simply additional mark-up to the distributor;
"Further report of the [illegible] by the [illegible]
[illegible] in the [illegible] to which Mr. Lefitt is re-

suring to the domestic producer a substantial share of the home market has the effect of making it possible to maintain the volume of production at efficient low cost levels. Other things being equal, costs of textile products very inversely with the ratio of operations and the evidence is that the Canadian industry has not relied solely onthe probability that it would secure a substantial share of the Canadian market in any case, but has takenall necessary steps to maintain it s volume and cut its costs by the use of up-to-date methods and machinery. That the Canadian industry has not in fact taken full advantage of the available tariff protection is shown for example in the first of the series of Canadian and United States comparative price statements filed by Mr. Hooper (Exhibit 820). In this exhibit the Canadian selling price averaged 13% below the duty paid value of the United States article if imported but there were of course, six occasions as shown by the same exhibit, on which the Canadian industry required all the tariff protection available and, in fact, was not able to bring down its prices to the level of imported merchandise."

MR. McRUER: You say because they did not do it they were not able to do it?

MR. KELLOCK: I do. "Another instance taken

owing to the domestic producer a substantial share of the home market has the effect of making it possible to maintain the volume of production at efficient low cost levels. Other things being equal, costs of textile products vary inversely with the ratio of operations and the evidence is that the Canadian industry has not yet reached an the stage of efficiency that it could secure a substantial share of the Canadian market in any case but has therefore necessary made to maintain it a volume and cut its costs by the use of up-to-date methods and machinery. That the Canadian industry has not in fact been full advantage of available tariff protection is shown for example in the first of the series of Canadian and United States-Canadian Price Comparisons filed as Exhibit (Exhibit [illegible]). In this exhibit the Canadian selling price averaged 12% below the duty paid value of the United States article if imported but these were of course, six commodities as shown by the same exhibit, on which the Canadian industry received all the tariff protection available and, in fact, was not able to bring down its prices to the level of imported [illegible].

Mr. Lapham: You say because they did not do it they were not able to do it?

Mr. Fullerton: I do. "Another instance [illegible]

at random of the extent to which the available duty protection was not used by Canadian manufacturers is Exhibit 824 p.2 where only in one instance does the advance of the Canadian over the American selling price even come to half the amount of duty which would have been payable on importation from the U.S. In other words, where it was possible for the industry to produce and sell at less than the duty-paid cost of the imported article this has been done but at other times it has been found that all or even more than the protection available has been required.

It is submitted that for the great bulk of the Canadian consumers Canadian mills are able to and do, in fact, produce good quality merchandise in wide ranges, and at a fair price because of the volume of operations which the tariff affords them, because as shown in evidence, they do not take full advantage of the tariff and, as is also shown in evidence, selling prices of some goods are the same in Canada as in other countries."

I could have said are lower.

"....It is further submitted that with respect to those fabrics which, because of their novelty or style, are of a type or pattern not available from Canadian mills, the increase in the prices

at random of the extent to which the available duty protection was not used by Canadian manufacturers is exhibit 64 p.4 more duty in one instance does the advance of the Canadian over the American selling price even come to half the amount of duty which would have been payable on importation from the U.S. In other words, it was possible for the industry to produce and sell at less than the duty-paid cost of the imported article this has been done but at other times it has been found that all or even more than the protection available has been required.

volume of our trade when the tariff effects them, because as shown in evidence, they do not make full advantage of the tariff and, as is also shown in evidence, selling prices of some goods are the same in Canada as in other

I could have said are lower.

"....It is further submitted that with respect to those factors which, because of their novelty or style, are of a type or pattern not available from Canadian mills, the increase in the price of

of these goods, because of the tariff, is not of great moment to the class of consumer to which they go since the increase in price in this case is no hardship to a customer who buys them because of their style consideration rather than their price."

"In so far as the evidence shows the trend of prices at which Canadian mill products have been sold since 1930 the fact is established that no attempt has been made by the Canadian mills to use the tariffs provided in 1930 as a means of artificially maintaining prices to the detriment of the consumer. The evidence is on the contrary that prices have fallen during this period to a greater extent than the prices of the raw materials from which the products are manufactured. In the case of woollen goods, for example, the evidence shows that although in February 1935 the prices of wool tops were from 6¢ to 7¢ per pound below the 1930 price level the price of finished cloth manufactured from these tops was from 12¢ to 37¢ per pound below 1930. Further evidence on the decline in the consumer cost of wool goods is as follows:

1. 16 oz. botany blue worsted
   1930 mill price $2.16 per lb.
   1935 " " 1.60 per lb.
raw material about 4¢ per lb. higher in 1935 than in 1930.

2. Standard white blanket,
   1930 mill price - .85¢ per lb.
   1935 " " .52¢ "

It been quite common of not least, is not or great moment to the claim of consumer to which they go since the increase in price in this case is no indicant to a consumer who only takes heeds of their style consideration rather than their price.

"In so far as the evidence shows the trend of prices at which the claim mill products have been sold since 1930 the Board is satisfied that no attempt has been made by the combine mills to use the tariffs provided in 1930 as a means of artificially maintaining prices to the detriment of the consumer. The evidence is on the contrary that prices have fallen during the period to a greater extent than the prices of the raw materials from which the products are manufactured. In the case of woollen goods, for example, the evidence shows that although in February 1932 the prices of wool tops were from 8p to 7d per pound below the 1930 price level the price of finished cloth manufactured from these tops was from 1s to 4½p per pound below 1930. Further evidence on the decline in the consumer cost of wool goods is as follows:

1. 16 oz. botany blue worsted
   1930 mill price 2.12 per lb.
   1932 " " 1.80 per lb.
   raw material about 4p per lb. higher in 1932 than in 1930.

2. Dominion mills Limited.
   1930 mill price - [illegible] per lb.
   1932 - [illegible]

raw material about 4¢ per lb.
lower in 1935 than 1930."

THE COMMISSIONER: Where you have these decimals and then figures that does not mean fraction of cents?

MR. KELLOCK: No, my lord, should be 85 cents and 52 cents per pound.

THE COMMISSIONER: The decimal should not be there?

MR. KELLOCK: No, my lord. Then in 1931 the price per yard was 1.80, the cost of raw material was 72 cents and the spread is shown. In 1932 the price fell to 1.60 and the cost of raw material went down to 63 cents. In 1933 it was 1.42 and the raw material 78 cents. In 1934 it was 1.60 and the cost of raw material 85 cents, and in 1935 it was 1.46 and the cost of raw material 80 cents. That is on 15-ounce wool filled serge. Then on 14-ounde grey serge, in 1931 the price per yard was 1.85 and the raw material cost, 57 cents. In 1932 the price per yard was 1.49 and the cost of raw material was 49 cents. In 1933 the price per yard was 1.43 and the cost of raw material 63 cents. In 1934 the price per yard was 1.63 and the cost of raw material was 72 cents and in 1935 the price per yard was 1.46 and the cost of raw material 65 cents.

"In the case of cotton goods, the prices at which fabrics have been sold by mills in recent years have show greater reductions on typical

raw material about 4¢ per lb. lower in 1935 than 1930."

THE CHAIRMAN: Here you have three commodities and then figures that does not seem to evince of course?

Mr. WELLS: No, my lord, the 1 lb of cotton was 55 cents and 55 cents per pound.

THE CHAIRMAN: The cotton should not be there.

Mr. WELLS: No, my lord. Then in 1931 the price per yard was 1.80, the cost of raw material was 72 cents and one pound is square. In 1934 the price fell to 1.50 and the cost of raw material went down to 65 cents. In 1935 it was 1.40 and the raw material 72 cents. In 1936 it was 1.00 and the cost of raw material 65 cents, and in 1935 it was 1.40 and the cost of raw material 80 cents. That is on 12-ounce wool filled serge. Then on 14-ounce grey serge, in 1931 the price per yard was 1.85 and the raw material cost, 87 cents. In 1932 the price per yard was 1.45 and the cost of raw material was 49 cents. In 1934 the price per yard was 1.45 and the cost of raw material 65 cents. In 1934 the price per yard was 1.00 and the cost of raw material was 72 cents and in 1935 the price per yard was 1.40 and the cost of raw material 65 cents.

In the case of cotton goods, the prices of which fabrics have been sold by mill [illegible] have shown greater reductions on t[illegible]

fabrics from 1930 to 1935 than the corresponding reductions in raw cotton prices. In February 1935 raw cotton was 1¢ per pound below the 1930 average but some typical finished products ranged from 1¢ to 7.8¢ per pound below the 1930 price level.

In the case of full fashioned silk hosiery, the average price per dozen of all full fashioned hosiery in Canada in 1927 was $12.70, in 1930 $10.02 and in the 1934 $5.68."

That is, per dozen pairs.

"... and in 10 years the retail price fell from $3.00 to 75 cents per pair, and the evidence is that the stocking which sold at $3.00 per pair 10 years ago were so inferior in quality as compared to the stocking now sold that they could not now be sold at any price. One typical construction of stocking which was $6.35 in March 1932 was $5.25 on May 1st, 1935, and $5.65 on September 21st, 1935, after the imposition of the surtax. At the same time as this reduction in price was taking place improvements in quality costing at least 25 cents per dozen had been introduced."

MR. McRUER: Now, there is one thing about that surtax, did they pay it?

THE COMMISSIONER: It was added to the price, I suppose.

MR. McRuer: Yes, I know but according to the

fabrics from 1930 to 1935 when the corresponding reductions in raw cotton prices. In February 1935 raw cotton was 1¢ per pound below the 1930 average but some typical finished products ranged from 1¢ to 7.5¢ per pound below the 1930 price level.

In the case of full fashioned silk hosiery, the average price per dozen of all full fashioned hosiery in Canada in July was $16.7?, in 1930 $10.00 and in see 1934 $8.00.?

Just in, per dozen pairs.

"... was in 10 years the retail price fell from $4.00 to 75 cents per pair, and the evidence is that the stocking which sold at $4.00 per pair 10 years ago were no inferior in quality as compared to the stocking now sold that they could not now be sold at any price. One typical construction of stocking which was $4.35 in March 1932 was $3.25 on May 1st, 1933, and $2.65 on September 21st, 1933, after the imposition of the surtax. At the same time as this remarkable in price was taking place improvements in hosiery costing at least 25 cents per dozen had been introduced."

R. McKINNON: Now, there is one thing sure that surely, all know you (?)

THE COMMISSIONER: It was added to the price, I

[illegible]

[illegible]: Yes, I have not [illegible] in the

statement of surtax in the Customs Department there was very little of surtax ever paid that was not all rebated.

MR. KELLOCK: Anybody that paid paid it. The facts are these - we have had them a number of times that the surtax went on in December 1935. Anybody who had bona fide contract at that time got them in free up to the 15th of November.

MR. McRUER: Yes, but the total amount of surtax that was paid altogether was $1,147 by all the silk industry on raw silk.

THE COMMISSIONER: During what period was that paid?

MR. McRUER: That is probably the whole time that the surtax was on.

THE COMMISSIONER: You say the surtax did not apply to shipment already contracted?

MR. McRuer: No. Then there is a lot rebated.

MR. KELLOCK: And I submit:

"The following deductions are to be made from the foregoing as related to consumer interests:"

THE COMMISSIONER: What was the total amount paid under the surtax.

MR. McRUER: There was $11,489 paid and there was refunds $5,832, drawbacks paid on export goods $3,910, or a total of $9,742, on either refunds or drawbacks leaving the net amount paid $1,747.

statement of marks in the Customs department there may not 1,174,000 of duties over paid that was not all refunded.

Mr. Mallock: Everybody knew, did you, it. The books are there - we have got about a market of these that the surtax was on in December 1920. Everybody who had been this contract at that time put them in free up to the 10th of November.

Mr. Mackenzie: Yes, but the total amount of duties that was paid along that was $1,147 by all the silk industry on raw silk.

The Chairman: During that period was that paid?

Mr. McKinnon: That is recovery we made like the surtax was on.

The Chairman: You say the surtax did not apply to grip net already contracted?

Mr. Bennett: No. Then there is a lot rebated.

Mr. Mallock: And I submit:

"The following deductions are to be made from the foregoing as related to consumer (including):

(1) Duty and the actual amount paid on the invoice.

(2) Excise: Duty and $1,147 paid and that was refunded (2), drawback paid on export goods ($1,147) or a total of $2,294, as against collection on drawback during the fiscal year $1,147.

THE COMMISSIONER: The refunds I suppose would be on account of those shipments contracted for?

MR. McRUER: I suppose so.

MR. KELLOCK: I submit the following deductions, my lord;

"(a) Theestablished basis of textile tariff on primary textile products, namely, yarns and fabrics places the main incident of tariff duties on only a relatively small fraction of the consumer dollar expended on clothing and furnishings;

"(b) an efficient primary textile manufacturing industry is essential to the maintenance of an equable level of retail values of clothing and furnishings in this market not only from the view of establishing a basic level of domestic primary fabrication cost but also from the very important view of producing materials peculiarly suited to Canadian requirements and of furnishing intensive and efficient competition in the field of primary textile distribution and financing;

"(c) the consumer interests is protected in an ~~eeff~~ efficient domestic primary textile industry (1) by establishing standards of quality suited to Canadian requirements, (2) by minimizing primary distribution costs, and (3) by minimizing primary selling costs and the financing of secondary distribution:

and in the last place:

"Employment directly and indirectly in the primary textile manufacturing industry in Canada is responsible for an important share or percentage of the total consumer market in the Dominion."

And I have already elaborated on that.

THE COMMISSIONER: We will adjourn now.

-- The Commission adjourned at 5.05 P.M. to resume Wednesday, March 3rd, 1937, at 10.30 A.M.

ROYAL COMMISSION ON THE TEXTILE INDUSTRY

HON. MR. JUSTICE W.F.A. TURGEON,

Commissioner,

A.S. Whiteley, Secretary,

ONE HUNDRED AND TWENTY-SECOND DAY

(March 3rd, 1937)

A R G U M E N T

Robert Brydie,
Official Reporter.

ROYAL COMMISSION ON THE TEXTILE INDUSTRY

HON. MR. JUSTICE W.F.A.TURGEON,

Commissioner,

A.S. Whiteley, Secretary,

Appearances:

J.C. McRuer, K.C. and E. Beauregard, K.C.	Commission Counsel,
R.L. Kellock, K.C.	For Primary Textile Institute.
C.G. Heward, K.C. Aime Geoffrion, K.C. and C.T. Ballantyne,	For Dominion Textile Company,
S.G. Dixon, K.C.	For Courtaulds Limited,
L.A. Forsyth, K.C.	For Canadian Celanese Ltd. and Canadian Silk Products Limited.
A.S. Bruneau, K.C.	For Canadian Cottons,
Thos. Tremblay, K.C. and J. H. Hebert,	For M.E. Binz Co. Ltd.
Francois Lajoie, K.C.	For Wabasso Cotton Co.

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COMMISSION ON THE C.N.R. DIESEL ACCIDENT

HON. EW. DUFFUS K.C., presiding.

A.W. Whitely, Secretary.

APPEARANCES:

A.A. Weaver, K.C. and E. Bourgeault, K.C.	Commission Counsel.
H.L. Kellock, K.C.	For Railway Traffic Controllers.
A.D. Hazard, K.C. and Jas Geoffrion, K.C. and G.F. Mulcahy	For Mechanic Traffic Foreman.
F.E. Gross, K.C.	For Conductor Lindsay.
L.A. Forsyth, K.C.	For Conductor Kennedy (C.N. and Canadian NYA employees) Limited.
A.W. Ormson, K.C.	For Conductor Gibbons.
Owen Bonnell, K.C. and I. M. Beaton	For Train Dispatcher Ker.
Frank Laing, K.C.	For Engineer Jackson.

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Ottawa, Ontario,

Wednesday, March 3, 1937.

-- The Commission resumed at 10.30 A.M.

ARGUMENT BY MR. KELLOCK (Resumed)

MR. KELLOCK: My lord, I have just a few remarks to make this morning in conclusion. I should like to give your lordship some information with regard to the comparative value of products of manufacture in the various provinces as compared with the value of agricultural production. I have taken the figures from the Canada Year Book, 1936.

THE COMMISSIONER: This, I suppose, will be part of your final submission ?

MR. KELLOCK: It is really concerning the consumer. I had just finished that section, and I think this comes in very well here.

THE COMMISSIONER: You have this information in exhibit form ?

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: It will be Exhibit 1352.

EXHIBIT 1352: Statement of Value of Production in Canada, by provinces, in 1933, taken from Canada Year Book, 1936, page 210.

MR. KELLOCK: As your lordship will see from that exhibit the total value of production in Prince Edward Island was $17,000,000, divided, $13,000,000

[illegible] Canada, [illegible]

[illegible], [illegible] 6, 1947.

[illegible] at 10.00 a.m.

[illegible] (Resumed)

Mr. [illegible]: My Lord, I have just a few [illegible] to make this morning in consultation. I should like to give, [illegible] some information with regard to the comparative value of products of manufactures in the various provinces as compared with the value of agricultural production. I have taken the figures from the Canada Year Book, 1946.

THE COMMISSIONER: This, I suppose, will be part of your final submission?

Mr. [illegible]: It is really concerning the [illegible]. I had just finished that section, and I think this comes in very well here.

THE COMMISSIONER: You have this information in exhibit form?

Mr. [illegible]: Yes, my Lord.

THE COMMISSIONER: It will be exhibit 1[illegible].

EXHIBIT 1[illegible]: Statement of value of production in Canada, by provinces, in 1946, taken from Canada Year Book, 1946, page 210.

Mr. [illegible]: As your Lordship will see from that exhibit the total value of production in primary industry found was $17,000,000, divided, $16,000,000

for agriculture, and $3,000,000 for manufacturing. In Nova Scotia the total is $110,000,000, divided $27,000,000 for agriculture and $53,000,000 for manufacturing.

THE COMMISSIONER: Pardon me a moment. What makes up the difference ?

MR. KELLOCK: Other items of production, my lord, such as mining and a number of others.

MR. McRUER: Is fishing in there ?

MR. KELLOCK: No, but fishing is one of the items to be found in that same table in the Canada Year Book. I have simply set up in this exhibit manufacturing as against agricultural production.

THE COMMISSIONER: But there is something left over ?

MR. KELLOCK: Yes, my lord. For New Brunswick the total production was $82,000,000, divided $22,000,000 for agriculture and $45,000,000 for manufacturing; for Quebec the total was $891,000,000, divided $155,000,000 for agriculture and $653,000,000 for manufacturing; Ontario, total $1,492,000,000, divided ~~$262,~~ $326,000,000 for agriculture and $1,005,000,000 for manufacturing.

MR. McRUER: Where would pulpwood come in ? Would it come in there as manufacturing or what ?

MR. KELLOCK: There is in that same table in the Canada Year Book a section for forestry products, and I would think that pulp would be included there.

THE COMMISSIONER: But you have not got it here ?

for agriculture, and $4,300,000 for manufacturing. In New Brunswick the total is $117,000,000, divided $47,000,000 for agriculture and $38,000,000 for manufacturing.

The Commissioner: Freedom as a result, what was added to the difference?

Mr. ROBLIN: Other items of accumulation, my lord, such as mining and a number of others.

Mr. MARTIN: Is fishing in there?

Mr. ROBLIN: No, but fishing is one of the items to be found in that same year in the Dawson Year Book. I have already set up in this exhibit manufacturing as against agricultural production.

Mr. [illegible]: Do [illegible] over?

Mr. ROBLIN: Yes, my lord. For Nova Scotia the total production was $88,000,000, divided $20,000,000 for agriculture and $40,000,000 for manufacturing; for Quebec the total was $297,000,000, divided $105,000,000 for agriculture and $62,000,000 for manufacturing; Ontario, total $1,492,000,000, divided [illegible] $366,000,000 for agriculture and $1,000,000,000 for manufacturing.

Mr. MACKAY: Where would pulpwood come in? Would it come in there as manufacturing or what?

Mr. ROBLIN: There is in that same table in the Dawson Year Book a section for forestry products and I would think that pulp would be included there.

The COMMISSIONER: But you have not put it here

MR. KELLOCK: No, I have simply set out agriculture as against manufacture. The table is taken from page 210 of the Canada Year Book, 1936, and forestry products are given there.

MR. McRUER: They do not seem to be entered for Ontario for some reason or other. Is this the gross production ?

MR. KELLOCK: Yes.

MR. McRUER: Oh yes. There is $47,000,000 under forestry for Ontario.

MR. KELLOCK: The other headings given in the table in the year book, my lord, are forestry, fisheries, trapping, mining, electric power, construction, custom and repairs; the latter would be service. Turning to Exhibit 1352 again, the total production for Manitoba is $167,000,000, divided $64,000,000 for agriculture and $91,000,000 for manufacturing.

THE COMMISSIONER: I wonder what that would mean -- $91,000,000 under manufacturing as compared with $64,000,000 for agriculture. The manufacturing figure is 50 per cent more than the other, is it not ?

MR. KELLOCK: Yes, my lord. Then for Saskatchewan the total is $162,000,000, divided $119,000,000 for agriculture and $36,000,000 for manufacturing; Alberta, total $208,000,000, divided $127,000,000 for agriculture and $55,000,000 for manufacturing.

THE COMMISSIONER: What is the difference between the net and gross ?

MR. ARLOOK: No, I have already set out agricultural as against manufacture. The table is taken from page 210 of the Ontario Year Book, 1946, and forestry products are given there.

MR. LEBOUR: They do not seem to be entered for Ontario for some reason or other. Is this the gross [illegible] ?

MR. ARLOOK: Yes.

MR. [illegible] Q. [illegible] Ontario.

MR. ARLOOK: The other headings given in the table in the year book, my lord, are lumbering, fishery, trapping, mining, electric power, construction, water and service; the latter would be service. Turning to Exhibit 1388 again, the total production for Manitoba is $147,000,000, divided [illegible] manufacturing.

THE COMMISSIONER: I wonder what that would mean -- $31,000,000 under manufacturing as compared with $64,000,000 for agriculture. The manufacturing figure is 50 per cent more than the other, is it not ?

MR. ARLOOK: Yes, my lord. Then for Saskatchewan the total is $152,000,000, divided $13,000,000 for agriculture and $86,000,000 for manufacturing; Alberta, total $308,000,000, divided $127,000,000 for agriculture and $55,000,000 for manufacturing.

THE COMMISSIONER: What is the difference between the east and west ?

MR. KELLOCK: The net, my lord, is after you take out the raw material.

MR. WHITELEY: There are certain agricultural pursuits which are put in one division or the other. Is dairying, for example, included under manufacturing or agriculture ?

MR. KELLOCK: Do you mean dairy factories, for instance ?

MR. WHITELEY: Yes.

MR. KELLOCK: I am told they are included under manufacturing.

THE COMMISSIONER: The raw material there is milk.

MR. McRUER: In the table in the year book there is a footnote which says that trapping includes the trapping industry of the Northwest territories.

MR. KELLOCK: I have not got the Northwest Territories in here at all.

MR. McRUER: It is not in the table. I do not know whether Mr. Whiteley could explain that or not.

MR. WHITELEY: There is one other thing I might mention, and that is that a good many dairy factories are also city milk distributors, and if they are included under manufacturing it would swell the manufacturing figure as opposed to agriculture.

MR. KELLOCK: The milk itself would be under agriculture, would it not ?

MR. WHITELEY: Yes, but there is quite a variation in the price of raw milk and the price at which

MR. ARMOUR: The act, my Lord, is after you have got the raw material.

MR. MILLAR: There are certain agricultural products which are put in one division or the other, in dairying, for example, licensed under manufacturing or agriculture?

MR. ARMOUR: Do you mean dairy factories, for instance?

MR. MILLAR: Yes.

MR. ARMOUR: I am told they are licensed under manufacturing.

THE CHAIRMAN: The raw material there is milk.

MR. ARMOUR: In the table in the year book there is a footnote which says that dairying includes the dairying industry of the Northwest territories.

MR. ARMOUR: I have not got the Northwest territories in here at all.

MR. MILLAR: It is not in the table. I do not know whether Mr. Bailey could explain that or not.

MR. MILLAR: There is one other thing I might mention, and that is that a good many dairy factories are also city milk distributors, and if they are licensed under manufacturing it would swell the manufacturing figure as opposed to agriculture.

MR. ARMOUR: The milk itself would be under agriculture, would it not?

MR. MILLAR: Yes, but there is quite a manufacture in the sense it has milk and has gone to extra

it is sold to consumers.

MR. KELLOCK: The difference represents the value added by manufacturing, in part.

MR. WHITELEY: Yes, it may be.

MR. KELLOCK: The net figures, my lord, pretty well speak for themselves, and perhaps it is not necessary for me to take time to read them.

THE COMMISSIONER: Can you explain the second column ? What is meant after taking out raw materials ? Take Saskatchewan. According to you, the net is the same for manufacturing as for agriculture, while the gross is 119 to 36. What is taken out to bring agriculture down so low and leave manufacturing so high ?

MR. KELLOCK: 119 to 78, my lord.

THE COMMISSIONER: It is 119 to 36, gross, and when you come to the net it is 78 to 78.

MR. WHITELEY: There is a mistake in the typing. The figures do not add. In the first place you have 119 plus 36m which added together do not make 162.

THE COMMISSIONER: Adding the two columns does not give the total in any of these cases.

MR. KELLOCK: There is something not included, mining, fishing, trapping, electric power, and so forth.

THE COMMISSIONER: Still you have this. You have for Saskatchewan 119 for agriculture and 36 for manufacturing in the gross. When you come to the net manufacturing is 78 and you reduce agriculture

(1 Mr. Laskin on Commission)

MR. E. LASKIN: The difference represents the value added by manufacture, in part.

MR. MOTTER: Yes, it may be.

MR. E. LASKIN: The net figures, my Lord, pretty well speak for themselves, and perhaps it is not necessary for me to take time to read them.

THE COMMISSIONER: Are you saying to second volume? What is meant after making our own materials? These commodities. According to you, the net is the same for manufacturing as for agriculture, while the gross is 119 to 86. What is not in using agriculture then so low and lower manufacturing so high?

MR. LASKIN: 119 to 78, my Lord.

THE COMMISSIONER: It is 119 to 86, I mean, and when you come to the net it is 78 to 78.

MR. MULDOON: There is a mistake in the typing. The figures do not add. In the first place you have 119 plus 38 which added together do not make 119.

THE COMMISSIONER: Another the two columns does not give the total in any of these cases.

MR. MULDOON: There is something not included, mining, fishing, trapping, electric power, and so forth.

THE COMMISSIONER: Still you have this. You have for Saskatchewan 119 for agriculture and 38 for manufacturing in the gross. When you come to the net manufacturing is 98 but not, having regard

to 78.

MR. KELLOCK: I think that second 78 is wrong.

THE COMMISSIONER: I think there is something wrong with both figures.

MR. KELLOCK: I am sorry, my lord. Manitoba ought to be 46 and Saskatchewan 17.

THE COMMISSIONER: That is more like it.

MR. KELLOCK: Yes, and Alberta should be 26 and British Columbia 75. In the copying apparently the second column was just slavishly copied into the third.

MR. McRUER: The net for British Columbia is 75 ?

MR. KELLOCK: 75.

MR. WHITELEY: Of course, with respect to these manufacturing figures, the extent of manufacturing is in some cases relatively small. In Manitoba, for instance, I think there are certain firms there which are classed as manufacturing iron products, when all they might do is import more or less shaped products from the east, and drill holes in them, cut them in lengths, and that sort of thing.

THE COMMISSIONER: Any transformation is manufacturing.

MR. WHITELEY: Yes, but the amount of manufacturing involved is sometimes relatively small. Is such manufacturing included in the figure of $46,000,000 for Manitoba ?

MR. KELLOCK: Yes.

MR. McRUER: There is something here that

MR. GARDINER: I think that second 75 is wrong.

THE COMMISSIONER: I think there is something wrong with both figures.

MR. [illegible]: I am sorry, my lord. Manitoba seems to be 45 and Saskatchewan 17.

THE COMMISSIONER: That is more like it.

MR. [illegible]: Yes, and Alberta should be 25 and British Columbia 75. In the copying apparently the second column was just slavishly copied into the [illegible].

MR. [illegible]: The net for British Columbia is 75

MR. [illegible]: 75.

MR. [illegible]: Of course, with respect to these manufacturing figures, the extent of manufacturing is in some areas relatively small. In Saskatchewan, for instance, I think there are certain items there which are classed as manufacturing item processes, when all they might do is import more or less canned goods from the east, and drill holes in them, cut them in lengths, and that sort of thing.

THE COMMISSIONER: Any transformation is manufacturing.

MR. [illegible]: Yes, but the amount of manufacturing involved is sometimes relatively small. Is such manufacturing included in the figure of $46,000,000 for Manitoba ?

MR. [illegible]: Yes.

MR. [illegible]: There is something here that

puzzles me. The table in the Canada Year Book gives the percentages of the value of net production to the total, and in Manitoba manufactures represent 38 per cent.

MR. KELLOCK: Of the total.

MR. McRUER: Of the total.

THE COMMISSIONER: No. Under net for Manitoba it is 46 for manufacturing and 99 for the total.

MR. McRUER: I am looking at the net in the table. In Manitoba the percentage is 33.4 per cent of the total. In this other table it is about 50 per cent.

THE COMMISSIONER: You are looking at the book ?

MR. McRUER: I am looking at the book. In Saskatchewan it is 9.88 per cent net. That is not very far out. Alberta is 12.29 per cent. That is about right. British Columbia is 25 per cent, and my friend shows about 50 per cent.

MR. KELLOCK: They are on two consecutive pages in the book.

MR. McRUER: I do not know.

MR. WHITELEY: That is not the proportion of the total for the dominion, is it ?

MR. McRUER: You look at them, Mr. Whiteley, it is your own business more than mine.

THE COMMISSIONER: We will let Mr. Whiteley take this exhibit and look at it.

MR. WHITELEY: In the table it is manufacturing not elsewhere specified ?

Mr. McRUER: I know, but is there any difference between this and themanufacturing in the other table ?

MR. WHITELEY: Electric power is probably included under manufacturing.

MR. McRUER: It is in the other table.

THE COMMISSIONER: And fisheries, I suppose ?

MR. McRUER: That is in both tables.

MR. WHITELEY: I will look at it.

MR. KELLOCK: If I may now continue, my lord, Exhibit 1350 was a graph based on Exhibit 857, and it compared the Canadian selling price of the article dealt with in Exhibit 857 with the United Kingdom selling price, plus duty and excise.

THE COMMISSIONER: That puts the United Kingdom selling price in a straight line.

MR. KELLOCK: I think there were some ups and downs. Mr. Hooper has discovered that with regard to a certain period there is an error in his figures on the exhibit with regard to the conversion of the United Kingdom selling price, and therefore it throws the gross out for that period. I shall have to ask your lordship to allow me to correct it. Mr. Hooper has corrected it already, have you not ?

MR. HOOPER: No, not yet.

MR. KELLOCK: Perhaps you will correct the figures in Exhibits 858, 857, 860, 861 and 865 for the same period.

I have a different figure, my lord, for the proclaimed value of the yen for 1938, in view of the

fact that it is based on the figures for the preceding five years, and I should like to make it the subject of an Exhibit.

MR. McRUER: Where does this come from ? There was some dispute about what the figure was before and we got it from the Department of External Affairs.

MR. KELLOCK: It has turned out to be the same as my figures.

MR. McRUER: Then you were right.

MR. KELLOCK: I was right, and with that as a precedent I hope I am right in this case. This Exhibit shows, my lord, the proclaimed value of the yen for next year as 29.87 cents, which is not very far away.

THE COMMISSIONER: Is there any doubt about these figures, before the Exhibit is put in, so that we shall not have to take it out again ?

MR. McRUER: We were right and wrong the last time. I think Mr. Kellock was wrong on the first application and right on the second.

MR. KELLOCK: No.

MR. McRUER: I would like to have it checked, but it can go in in the meantime. I will write a letter to the Department of External Affairs, and determine whether this is according to their computation.

THE COMMISSIONER: That will be Exhibit 1353.

EXHIBIT 1353: Proclaimed value of the yen, 1938.

five years, and I would like to have it the subject of an Exhibit.

MR. [illegible]: Where does this come from? There was some dispute about what the figure was before and we got it from the Department of National Revenue.

MR. [illegible]: It has turned out to be the same as my figure.

MR. [illegible]: Then you were right.

MR. [illegible]: I was right, and with that as a precedent I hope I am right in this case. This should show, my Lord, the production value of the gas for next year as 20.27 cents, which is not very far away.

THE COMMISSIONER: Is there any doubt about those figures, before the Exhibit is put in, so that we shall not have to take it out again?

MR. [illegible]: We were right and wrong the last time. I think Mr. [illegible] was wrong on the first application and right on the second.

MR. [illegible]: I would like to have it checked, but it can go in in the meantime. I will write a letter to the Department of National Revenue, and I think, whether this is according to their [illegible].

THE COMMISSIONER: That will be Exhibit 1078.

[illegible] . Production value of the year.

MR. KELLOCK: Your lordship may recall that Exhibits 1342 and 1351 showed an increasing proportion of duty-free imports into Canada from all countries, and also from the United Kingdom, during the period from 1929 to 1936. My friend suggested that this was at least partly due to the fact that the 1930 duties had interfered with the importation of manufactured goods while the importation of duty-free raw materials had continued, and that therefore the percentage figures which compared on those exhibits do not tell the whole story.

I have alanyzed the figures from the Trade of Canada for the two fiscal years 1930 and 1935, and I find that the situation is as I contended at that time on the basis of percentages, namely, that the increase in the proportion of duty-free imports was partly due to the provision for increasing the duty-free importation of manufactured textiles. In 1930 there were 26 items allowing the importation of duty-free manufactured textiles, while in 1935 the number of items had increased to 46. Those items are not limited to duty-free imports from the United Kingdom, but from all countries.

THE COMMISSIONER: You are talking of textile products only ?

MR. KELLOCK: Yes, my lord. Now with regard to the importation of manufactured textiles from all countries, the importation amounted in 1930 in dollars to $138,693,422.

THE COMMISSIONER: That is the entry of free

MR. ARLOOK: Your lordship may recall that Exhibits 1242 and 1251 showed an increasing proportion of duty-free imports into Canada from all countries, and also from the United Kingdom, during the period from 1929 to 1936. My friend suggested that this was at least partly due to the fact that the [illegible] of manufactured goods while the importation of duty-free raw material had continued, and that therefore the percentage figures which can be drawn on these exhibits do not tell the whole story.

I have eliminated the figures from the trade of Canada for the two fiscal years 1935 and 1936, and I find that the situation is as I contended at that time on the basis of percentages, namely, that the increase in the proportion of duty-free imports was partly due to the provision for increasing the duty-free importation of manufactured textiles. In 1929 there were 26 items allowing the importation of duty-free manufactured textiles, while in 1935 the number of items had increased to 46. These items are not limited to duty-free imports from the United Kingdom, but from all countries.

MR. COMMISSIONER: You are talking of textile products only?

MR. ARLOOK: Yes, my lord. Now with regard to the importation of manufactured textiles from all countries, the importation amounted in 1930 in dollars to $146,398,488.

THE COMMISSIONER: That is the entry of free

textiles ?

MR. KELLOCK: No, that is the entry of all manufactured textiles.

MR. McRUER: What period ?

MR. KELLOCK: In 1930.

MR. McRUER: That is the total importation of manufactured textiles ?

MR. KELLOCK: Yes, and in 1935 the figure is $48,789,793, which of course shows a substantial drop in the dollar value, but this was partly due to the drop in all commodity prices which occurred during that period. When you come to analyze the extent to which manufactured textiles were admitted free of duty the imports in 1930 under 26 duty-free items amounted to $17,820,559, while under the 46 duty-free items in 1935 the duty-free imports were $12,241,628. In other words, the proportion of manufactured textiles admitted duty-free in 1930 was 12.8 per cent, and in 1935, 25.1 per cent.

MR. McRUER: Will you tell me whether wool tops are included in the duty-free imports of manufactured textiles ?

MR. KELLOCK: No.

MR. McRUER: Are you sure about that ?

MR. KELLOCK: Certain.

MR. WHITELEY: Wool yarns would be.

MR. KELLOCK: Yes.

MR. WHITELEY: Wool tops are not included as raw material. They come in as partly manufactured goods.

textiles ?

MR. MACDOUGALL: No, that is the entry of all manufactured textiles.

MR. [illegible] textiles ?

MR. MACDOUGALL: Yes.

MR. AGLUGH: What is the total importation of manufactured textiles ?

MR. MACDOUGALL: Yes, and in 1929 the figure is $46,769,792, which of course shows a substantial drop in the dollar value, but this was partly due to the drop in all commodity prices which occurred during that period. When you come to analyze the extent to which manufactured textiles were admitted free of duty the imports in 1930 under 26 duty-free items amounted to $17,840,355, while under the 46 duty-free items in 1929 the duty-free imports were $12,841,608. In other words, the proportion of manufactured textiles admitted duty-free in 1930 was 12.8 per cent, and in 1929, 25.1 per cent.

MR. MACDOUGALL: Will you tell me whether wool tops are included in the duty-free imports of manufactured textiles ?

MR. MACDOUGALL: No.

MR. WOODWORTH: Are you sure about that ?

MR. MACDOUGALL: Certain.

MR. WHITELEY: Wool yarns would be.

MR. MACDOUGALL: Yes.

MR. WHITELEY: Wool tops are not included as raw material. They come in as partly manufactured goods.

MR. KELLOCK: These are manufactured textiles, my lord, so the figures bear out the percentage figures on the exhibits I have previously put in. Exactly the same thing happened with regard to the imports of manufactured textiles from the United Kingdom. I have already given your lordship the world imports, and now with regard to the United Kingdom, there were 24 duty-free items in our tariff in 1930 for manufactured goods, and in 1935 there were 44 duty-free items.

THE COMMISSIONER: These are manufactured goods ?

MR. KELLOCK: Yes, my lord, imports of manufactured textiles.

THE COMMISSIONER: Pardon me. These are all textiles, are they not ?

MR. KELLOCK: Yes, these are all manufactured textiles. The imports of manufactured textiles from the United Kingdom in 1930 were valued at $61,960,881.

THE COMMISSIONER: That is all ?

MR. KELLOCK: All manufactured textiles from the United Kingdom, and for 1935 the figure was $31,494,843. Of those the following were entered free of duty. In 1930 the figure was $6,963,619, and in 1935 there was an actual increase to $7,585,392, the absolute increase being $611,773. Reducing those figures to percentages the manufactured textiles imported from the United Kingdom

MR. KINDON: These are manufactures textiles, my lord, so the figures been out the percentage figures on the exhibits I have previously put in. Exactly the same thing happened with regard to the imports of manufactured textiles from the United states. I have already given your lordship the world imports, and you will remark to the United states, there were 24 duty-free items in our tariff in 1940 for manufactured goods, and in 1954 there were [illegible] items.

HIS LORDSHIP: These are manufactured goods?

MR. KINDON: Yes, my lord, imports of manufactured textiles.

THE COMMISSIONER: Jordan No. These are all textiles, are they not?

MR. KINDON: Yes, these are all manufactured textiles. The imports of manufactured textiles from the United States in 1940 were valued at $21,000,081.

THE COMMISSIONER: That is all?

MR. KINDON: All manufactured textiles from the United States, and for 1953 the figures was $1,494,865. Of those the following were entered free of duty. In 1953 the figure was $6,962,619, and in 1955 there was an actual increase to $7,586,292, the absolute increase being $621,773, bringing those figures to percentages the manufactured textiles imported from the United States

free of duty were expressed in percentages in 1930 11.2 per cent and in 1935 24.1 per cent. I have prepared two tables, my lord, covering that situation, the first dealing with all textile imports, and the second dealing with textile imports from the United Kingdom which, with your lordship's permission I should like to have typed.

THE COMMISSIONER: You are not ready to put them in now ?

MR. KELLOCK: I can put them in and have them numbered, and then have them copied.

THE COMMISSIONER: They will be Exhibits 1354 and 1355.

MR. KELLOCK: Then Exhibit 1354 will cover all textile imports from all countries.

THE COMMISSIONER: In those two years ?

MR. KELLOCK: Yes, my lord.

EXHIBIT 1354: Importations of textiles from all countries in 1930 and 1935.

MR. KELLOCK: Then the other exhibit, 1355, will be the textile imports from the United Kingdom for the same two years.

EXHIBIT 1355: Importations of textiles from the United Kingdom in 1930 and 1935.

MR. KELLOCK: There was one point which arose in the discussion yesterday, my lord. My friend in referring to the previous Ottawa agreement of 1932, which has just expired, was pointing out that

ites of duty were expressed in percentages in 1929 11.2 per cent and in 1935 24.1 per cent. I have prepared two tables, my lord, covering that situation, the first dealing with all textile imports, and the second dealing with textile imports from the United States whole, with your lordship's permission I should like to have typed.

THE CHAIRMAN: You are not ready to put them in now?

MR. ARMOUR: I can put them in and have them numbered, and then have them copied.

THE CHAIRMAN: They will be exhibits Ten and Twelve.

MR. ARMOUR: Then Exhibit Twelve will cover all textile imports from all countries.

THE CHAIRMAN: In those two years?

MR. ARMOUR: Yes, my lord.

EXHIBIT TEN: Importations of textiles from all countries in 1929 and 1935.

MR. ARMOUR: Then the other exhibit, 1935, will be the textile imports from the United States for the same two years.

EXHIBIT TWELVE: Importations of textiles from the United States in 1929 and 1935.

MR. ARMOUR: There was one point which arose in the discussion yesterday, my lord. My friend in referring to the previous Ottawa agreement of 1932, which has just expired, was pointing out that

upon any application to the tariff board, under Article 11, there would have to be the fixing of a duty on the relative cost of production.

THE COMMISSIONER: You mean under the old treaty ?

MR. KELLOCK: Under the old treaty, and reasonable competition no matter whether the industry concerned was an economic one from the Canadian standpoint or not. We overlooked Article 10, my lord, which specifically says:

"His Majesty's government in Canada undertake that protection of tariffs shall be afforded against United Kingdom products only to those industries which are reasonably assured of sound opportunities for success."

Which I think disposes of that contention.

MR. McRUER: That would probably exclude the hosiery industry. You did not seem to think they had a reasonable opportunity.

THE COMMISSIONER: On the other hand, there was another condition about industries requiring special care.

MR. KELLOCK: In Article 11 they distinguish between industries fully established and those requiring special care.

THE COMMISSIONER: Yes, I have those well in mind.

MR. KELLOCK: I want to make one last reference to my friend's brief at page 279 and following pages.

[illegible] by application to the [illegible] board, under Article II, there would have to be the fixing of a duty on the relative cost of production.

THE COMMISSIONER: You mean under the old tariff?

MR. ANDERSON: Under the old tariff, and reasonable competition no matter whether the industry concerned was an economic one from the Canadian standpoint or not. We overlooked Article 10, my lord, which specifically says:

"His Majesty's government in Canada undertakes that protection of tariffs shall be afforded against United Kingdom products only to those industries which are reasonably assured of equal opportunities for success,"

Which I think disposes of that contention.

Mr. McLEAN: That would probably exclude the dairy industry. You did not seem to think it had a reasonable opportunity.

MR. ANDERSON: On the other hand, there was another condition about industries requiring special care.

MR. ANDERSON: In Article II they distinguish between industries fully established and those requiring special care.

THE COMMISSIONER: Yes, I have those well in mind.

MR. [illegible]: I want to make one last reference to Mr. Fisher's notes at page 119 and following pages.

My friend referred on page 279 to a "news release". On February 25, 1935, Mr. Hallam wrote to the Women's Wear Daily and the Daily News Record, my friend says on page 279, enclosing a news item in the words of the draft submitted to Mr. Marx, and the news item is set out on that page of my friend's brief. My friend says that this is just propaganda, and he refers particularly to the language in the letter.

THE COMMISSIONER: As I recollect that, this news item went on to say that warnings had been sent out, and Mr. McHuer said that Mr. Hallam had been asked to produce any warnings, but he did not produce any.

MR. KELLOCK: That is what I want to deal with.

THE COMMISSIONER: The letter to Marx said that it would be necessary to send out something.

MR. KELLOCK: In order to justify the news release. That is exactly the point I want to deal wit The word "justify" does not refer to the content of the news item at all.

THE COMMISSIONER: Where is the word "justify" ? Oh, I see it is above on the same page. Mr. Hallam says that he will have to justify it by writing a letter. The news release says that warnings have been sent out, and then Mr. Hallam writes: I will have to send out some warnings to justify myself.

MR. KELLOCK: The "justify" does not refer to the contents of the release, but to justifying the

My friend referred on page 279 to a "news release". On February 25, 1946, Mr. Hallam wrote to the Commission, and I quote from that letter, my friend says on page 279, analysing a news item in the words of the draft submitted to Mr. Cox, and the news item is set out on that page of my friend's brief. My friend says that this is just propaganda, and he refers pritchardly to the language in the [illegible].

THE COMMISSIONER: I recollect that, this news item went on to say that examiners had been sent out, and Mr. Hydar said that Mr. Hallam had been asked to produce any evidence, but he did not produce any.

Mr. [illegible]: That is what I want to deal with.

THE COMMISSIONER: The letter to Cox said that it would be necessary to send out examiners.

Mr. [illegible]: In order to justify the news release. That is exactly the point I want to deal with. The word "justify" does not refer to the contents of the news item at all.

THE COMMISSIONER: Where is the word "justify"? Oh, I see it is above on the same page. Mr. Hallam says that he will have to justify it by writing a letter. The news release says that warnings were sent out, and then Mr. Hallam writes: I will have to send out some warnings to justify myself.

Mr. [illegible]: The "justify" does not refer to the contents of the release, but to justifying the

contents of the news item as an item of news. That is what I want to deal with. The news item was perfectly accurate; the information it contained was accurate.

THE COMMISSIONER: At the time it was published ?

MR. KELLOCK: At the time it was published.

THE COMMISSIONER: There had been warnings sent out, then ?

MR. KELLOCK: That is what I want to deal with, my lord. Here is the situation. Your lordship will recall that the Minute Book of the Silk Association was before your lordship from time to time, and in the president's address of June 2, 1934, which was the last annual meeting preceding this date of February 25, 1935, the following language was used by the president:

"While recounting the expansion of our industry I would be neglectful of my duty --"

THE COMMISSIONER: Excuse me, what do you refer to ?

MR. KELLOCK: The address of the president of the Silk Association as it appears in the Minute Book.

MR. McRUER: Where is it in the evidence ?

MR. KELLOCK: It is not copied into the evidence, but you had the Minute Book and referred to it from time to time.

MR. McRUER: I asked Mr. Hallam to produce any letters that were sent out.

comments of the news item as an item of news. That is what I went to deal with. The news item was perfectly accurate; the information it contained was true.

THE COMMISSIONER: At the time it was published?

MR. EMMSON: At the time it was published.

THE COMMISSIONER: There had been nothing sent out, then?

MR. EMMSON: That is what I want to deal with, my lord. Here is the situation. Your lordship will recall that the Minute Book of the Silk Association was before your lordship from time to time, and in the president's address of June 8, 1964, which was the last annual meeting preceding the 27th of February 25, 1966, the following language was used by the president:

"While recounting the expansion of our industry I would be negligent if my not ---"

THE COMMISSIONER: Excuse me, what do you refer to?

MR. EMMSON: The address of the president of the Silk Association as it appears in the Minute Book.

MR. LUCAS: Where is it in the evidence?

MR. EMMSON: It is not copied into the evidence, but I've had the Minute Book and referred to it from time to time.

MR. LUCAS: I read the Minute Book yesterday and never found any.

THE COMMISSIONER: In the minutes of what date?

MR. KELLOCK: The minutes of the meeting of June 2, 1934.

THE COMMISSIONER: A year or a year and a half after the letter.

MR. KELLOCK: No, the meeting preceded the letter.

THE COMMISSIONER: Yes, I see, by six or seven months.

MR. KELLOCK: What I want to call your lordship's attention to is that the subject matter of this news item is dealt with in the president's address, and it is also dealt with in the address of the following year.

MR. McRUER: It must be kind of stale news after a year.

THE COMMISSIONER: Mr. Hallam in his news release gave a warning, and he cites it textually. He says;

"The warning in part says --

Page 17395 follows

THE COMMISSIONER: Thenhe quotes --"more care must be exercised in production", and so on. Now, is that what you are going to read there again?

MR. KELLOCK: That is what I am reading, my lord, from --

THE COMMISSIONER: Just a minute; you are reading from the minutes of --

MR. KELLOCK: The President's address on the 2nd of June, 1934.

MR. McGUIGAN: You say that is the warning that Mr. Hallam referred to in this news release in February, 1935?

THE COMMISSIONER: Not only that, but he quoted. But he doesn't say where it is from. June what?

MR. KELLOCK: June 2, 1934, the address of the president.

" While recounting the expansion of our industry, I would be neglectful in my duty if I did not warn you regarding the dangers of too much machinery and over-production. The increased production indicated by all the silk industry figures is mainly due to goods now being made in Canada by Canadian workers which were previously imported from countries outside of the British Empire. This source of expansion has come to an end and inasmuch as we are now providing the bulk of what Canada can consume, and now expansion can only take place in keeping with a larger home market. It is true that Canada has increased her exports of articles made of silk, chiefly silk hosiery, which

FIX COMMISSION: Yours saying -- "Duty must be exercised in production", and so on. Now, is that what you are going to read there again?

MR. KELLOCK: That is what I am reading, my lord, from --

THE COMMISSIONER: Just a minute; you are reading from the minutes of --

MR. KELLOCK: The President's address on the 9th of June, 1934.

MR. MONTH: You say that is the morning that Mr. Hallam referred to in this news release in February, 1935?

THE COMMISSIONER: Not only that, but he quotes. But he doesn't say where it is from. June what?

MR. KELLOCK: June 9, 1934, the address of the president.

" While recounting the expansion of our industry, I would be neglectful in my duty if I did not [illegible] you regarding the dangers of too much mechanization and over-production. The increased production [illegible] due to goods now being made in Canada by Canadian workers which were previously imported from countries outside of the British Empire. This [illegible] means of eliminating [illegible] as we are now providing the bulk of what Canada can consume, and our economists can only [illegible] in keeping with a larger home market. It is true that Canada has increased her exports of articles made of silk, chiefly silk hosiery, which

"in 1933 amounted to just over 200,000 doz. pairs, while exports of yardage goods amounted to only $89,536. This means that those with machinery must look to the Canadian market to absorb their production and our trade surveys show that we have not yet caught up to our installed machinery. Like all other industries when they expand our industry tended to put in too much machinery, but with the exercise of vigilance and common sense, and with further improvement in conditions in Canada, we may hope to escape the major evils of too much machinery which result in overproduction and ruinous prices."

And in the following year on the 12th of July, 1935, the president said this --

MR. McRUER: This is after?

MR. KELLOCK: This is after.

MR. McRUER: Six months after.

THE COMMISSIONER: I just point out now that is alright, that is a warning, but the warning Mr. Hallam quotes here is not what you have read.

MR. KELLOCK: No, my lord, we could not find the actual letters that went out. I am in the same position now as when Mr. Hallam was in the box, but I want to point out to your lordship that the warning had been given as much as six months before --

THE COMMISSIONER: That"a"warning.

MR. KELLOCK: Well, yes, but the substance of it, I submit, is exactly the same, my lord, and it was followed about six months later in these words:

is just over 200,000 des. pains, while capacity of vehicle roads amounted to only [illegible]. This means that those with machinery must look to the Canadian market to absorb their production and our trade survey shows that we have not yet caught up to our installed machinery. In all other industries when they expand our industry tended to put in too much machinery, but with the exercise of vigilance and common sense, and with further improvement in conditions in Canada, we hope to escape the major evils of too much capacity which result in overproduction and ruinous prices.

And in the following year on the 14th of July, 1929, the President said this --

MR. HOOVER: Could is after?

MR. KNOX: This is after.

MR. [illegible] (Chair).

THE COMMISSIONER: I just point out now that is alright, that is a warning, and the warning Mr. [illegible] quotes here is not what you have read.

MR. KNOX: No, my Lord, we could not find the actual letters that went out. I am in the same position now as when Mr. Gallow was in the box, but I want to point out to your Lordship that the warning had been given as much as six months before --

THE COMMISSIONER: That was warning.

MR. KNOX: Well, yes, but the substance of it, I submit, is exactly the same, my Lord, and it was followed about six months later in these words:

"With the rapid expansion of our industry, we are faced with a problem which has wrecked more than one promising industry. The machinery in the country is now more than sufficient to supply the needs of the Canadian market and take care of all the export business we can hope to obtain. The amount of machinery is not a great deal too much but it is sufficient to cause anxiety. The great expansion in the last ten years was due to the fact that goods made by workers in foreign countries which were sold in Canada were rapidly replaced by goods made by Canadian workers. The Canadian mills have now obtained all the employment that can be obtained for Canada in this way. No further expansion from this source is possible. To those who have carefully examined the vital statistics of the industry for the last three years - the amount of machinery installed, the production, the shipments, and the stocks in hand - it is at once apparent that if there is any further addition to machinery, we cannot hope to escape the major evils which result from overproduction, which not only works hardships on those who operate the mills, but on the workers employed in the mills."

THE COMMISSIONER: Is that another Presidential address?

MR. KELLOCK: Yes, my lord, on the 12th of July, 1935, and an exhibit was filed -- I have forgotten the number, my lord, -which shows the production, the

"With the rapid expansion of our industry, we are faced with a problem which has revolved once the one promising industry. The machinery in the country is now more than sufficient to supply the needs of the Canadian market and take care of all the export business we can hope to obtain. The amount of machinery is not a great deal too much but it is sufficient to cause trouble. The great expansion in the last ten years was due to the fact that goods made by workers in Canadian factories which were sold in Canada were replaced by goods made by American workers. Canadian mills have not replaced all the employees that can be obtained for work in this way. Further expansion from this source is possible. To those who have carefully examined the vital statistics of the industry for the last three years - the amount of machinery installed, the production, the shipments, and the stocks in hand - it is at once apparent that if there is any further addition to machinery, we cannot hope to escape the major evils which result from overproduction, which not only works hardships on those who operate the mills, but on the workers employed in the mills."

Mr. [illegible]: Yes, my lord, on the 12th of July 1928, an exhibit was filed -- I have forgotten the number, my lord, which shows the production, the

deliveries and stocks on hand. Exhibit 432, I am told, shows the production, deliveries and stocks in hand, issued by the Silk Association of Canada, and that shows in 1934 the production was greater than the deliveries and that the stocks on hand in January, 1935 were substantially in excess of previous years.

I submit, therefore, that so far as the contents of the news item are concerned it was perfectly accurate and it was quite right and proper in the interests of the public in Canada that new mills should not be established at a time when they were not needed and would only cause unemployment in the mills that were then in existence. Now, on the following page --

MR. McRUER: Then, you agree that it was an effort to keep new mills from coming into Canada?

MR. KELLOCK: I say it was an effort to advise anybody proposing to do such a thing so they would know exactly what the situation was, and I am quite satisfied, and I do argue, that at that time it was not in the interests, at that time, of the public in Canada that new mills should be established when the existing mills had greater facilities than were necessary to meet production.

MR. McRUER: Whether it was in the interests of the public or not, you agree with me it was an effort to keep new mills from coming into Canada, and you justify it on the ground it was alright. That is a different question, but I say you agree with my contention it was an effort to keep new mills from coming into Canada?

deliveries and stocks on hand. Exhibit 400, I am told, shows the production, deliveries and stocks in hand, issued by the Silk Association of Canada.

MR. MCLEAN: I AM [illegible] the deliveries and that the stocks on hand in January, [illegible].

I submit, therefore, that so far as the contents of the news item are concerned it was perfectly accurate and it was quite right and proper in the interests of the public in Canada that new mills should not be established at a time when they were not needed and would only cause unemployment in the mills that were then in existence. Now, on the following page --

MR. CONNOLLY: Again, you agree that it was an effort to keep new mills from coming into Canada?

MR. FOSTER: I say it was an effort to advise anybody proposing to do such a thing as very well knew exactly what the situation was, and I am quite satisfied, and I do agree, that at this time it was not in the interests, at that time, of the public in Canada that new mills should be established when the existing mills had greater facilities than were necessary to meet production.

MR. MCLEAN: Whether it was in the interests of the public or not, you agree with me it was an effort to keep new mills from coming into Canada, and you justify it on the ground it was right. That is a different question, but I say you agree with my conclusion it was an effort to keep new mills from coming into Canada?

MR. KELLOCK: It was an effort to advise anybody proposing to establish what the situation was and I argue --

MR. McRUER: What are they wanting to look after them for?

MR. KELLOCK: I submit to his lordship it was in the interests of nobody that additional machinery should be established at that time.

MR. McRUER: We have the record of the mills that were here, but I just want to know whether you are challenging my submission that it was an effort to keep new mills from coming into Canada?

MR. KELLOCK: Certainly it was, and a perfectly justifiable effort in the interests of everybody at that time.

MR. McRUER: Well, I will answer that.

MR. KELLOCK: Now, on the following page, my lord, on page 280 my friend refers to certain correspondence between Mr. Hallam, Mr. Marx and Mr. Cowling, Mr. Marx being at that time Chairman of the Broad Silk Section, and Mr. Cowling President of the Silk Association, in regard to a press release issued by Mr. Hallam in 1933 to Women's Wear in the United States, referred to by my friend in the middle of the page. My friend says the figures given in that release were apparently correct, and I am coming to what my friend criticizes as objections by Mr. Marx and Mr. Cowling to this release having been given, although the information in it was accurate. Their objection, my lord, as I shall show, I submit was not that the information

MR. HELLCOCK: It was an effort to advise anybody proposing to establish what the situation was and I

MR. MORDEN: What are they waiting to look after them for?

MR. HELLCOCK: I submit to his Lordship it was in the interests of nobody that additional machinery should be established at that time.

MR. MORDEN: We have the record of the mills that were there, but I just want to know whether you are challenging my submission that it was an effort to keep new mills from coming into Canada?

MR. HELLCOCK: I am, [illegible] justifiable effort in the interests of everybody at that time.

MR. MORDEN: Well, I will answer that.

MR. HELLCOCK: Now, on the following page, Mr. [illegible] [illegible] Mr. Coulting President of the Silk Association, in regard to a press release issued by Mr. [illegible] in 1935 to Women's Wear in the United States, referred to by my friend in the middle of the page. My friend says the figures given in that release were approximately correct, and I am coming to what my friend criticizes as objections by Mr. Bawn and Mr. Coulting to this release having been given, although the information in it was accurate. Their objection, my Lord, as I shall show, I submit was not that the information

had been given but that all the information had not been given. This set forth the increased production in Canada, but it did not set out that there were a number of mills operating at a loss at that time. The evidence on page 8183 shows that at the end of 1932 there was overproduction to such an extent that mills were casting around for ways and means to control it, and we have had the evidence about that. Their efforts came to nothing, as a matter of fact, but the fact that these efforts were made shows the conditions at that time. The reason that the sending out of incomplete information was considered serious by Mr. Hallam is set out on page 8211, line 25 --

THE COMMISSIONER: 82--

MR. KELLOCK: 8211, line 25, my lord.

THE COMMISSIONER: What page did you say?

MR. KELLOCK: 8211.

THE COMMISSIONER: Oh, of the evidence.

MR. KELLOCK: Yes, and what Mr. Hallam says is this:

"A. At this time, these dates, Mr. McRuer, we were at the bottom of the depression in Canada. The bottom of the depression hit Canada about the third or fourth month in 1933. At the same time there was a tremendous amount of machinery in the United States, bankrupt machinery which could be obtained for a song. Promoters were going to small towns in Canada and suggesting that silk mills be put into those towns with the

"town putting up some money, the local people putting up some money."

And my submission is that in those circumstances it was in the interests of any American mill contemplating coming to Canada that they should not come in under a false impression that there was plenty of room when, as a matter of fact, there was overproduction, and neither would it have been in the interests of Canadian towns who would be approached to support these enterprises.

On page 281 my friend refers to a letter of the 25th of September, 1928, and a request of Katakura and Company of New York for information as to the silk industry in Canada, and the letter which Mr. Hallam sent to Mr. Watson of Grouts Limited. What is raised is that Mr. Hallam's contention was that had the Census of Industry report been sent to this firm without explanation it would have been misleading. Now, in the evidence at page 8737, line 10, my lord, Mr. Hallam says --

THE COMMISSIONER: Where?

MR. KELLOCK: 8737, lines 10 to 19.

THE COMMISSIONER: 8737?

MR. KELLOCK: Yes, my lord, lines 10 to 19.

THE COMMISSIONER: Along there a while ago did you give me page 82?

MR. KELLOCK: 8211, my lord.

THE COMMISSIONER: I thought you meant 82, line 11.

MR. KELLOCK: No, my lord, I commenced to read at line 25.

THE COMMISSIONER: This is page 8737.

MR. KELLOCK: Yes, lines 10 to 19.

"Now, why did you say that if they had got hold of the Census of Industry report they might have concluded that the field here was not occupied?

A. Because the Census of Industry Report - the last one out was 1926, if I remember correctly, and this was 1928, and conditions had materially changed between those two years."

The letter to Katakura and Company is set out in the evidence at page 8742-A, and it can be seen from that that it does set out the information contained in the Census of Industry report with regard to 1926, but it follows with a more up to date summary of the situation that existed in 1928, and on 8744, line 30, Mr. Hallam said:

"A. That is perfectly correct; if I might just say, in this letter I point out what was in the Census of Industry reports, I point out that didn't give a true picture of the situation."

Then, on the following page, at line 29 --

"Q. Why wasn't there a Census of Industry in 1927; you were using Trade of Canada at 1928?

A. Because the government figures at that time didn't come out for two years afterwards".

I submit, my lord, that all that Mr. Hallam was concerned with in his letter to that company is that the up to date information was given which he did give, and that a mere recital of what was in the Census of Industry report in 1926 would not reflect the situation at that

THE COMMISSIONER: This is page 6767.

MR. PRICE: Yes, lines 10 to 16.

"Now, why did you say that if they had got hold of the Census of Industry report then might have concluded that the field here was not occupied?

A. Because the Census of Industry Report - the last one out was 1936, if I remember correctly, and this was 1938, and conditions had materially changed between those two years."

The letter to Kellogg and Company is set out in the evidence at page 6762-a, and it can be seen from the that it does set out the information contained in the

It follows with a note up to make accuracy of the situation

[illegible]

"A. That is perfectly correct; if I might just [illegible] in this letter I point out what was in the Census of Industry reports, I point out that didn't give a true picture of the situation."

Then, on the following page, at line 29 --

"Q. Why wasn't there a Census of Industry [illegible] you were using Trade of Canada at least?

A. Because the government figures at that time didn't come out for two years afterwards.

I submit, my lord, that all that Mr. Phillips was concerned with in his letter to the [illegible] up to date information was given which he did give, that a more recital of what was in the Census of Industry report in 1935 would not reflect the situation at the

time.

Now, on page 282 of my friend's brief my friend has something to say about a letter of June 4th, 1932 from Mr. Hallam to the Silk Journal of America enclosing a copy of an article from the Financial Times of Montreal, and asking that it be reprinted and commented on. Now, the facts set out in the article correctly present the situation which had become an evil, and the sending out to the United States with the suggestion for re-publication was done certainly for the benefit of the silk industry of Canada, but it was also for the benefit of any municipalities in Canada who might be approached to go into the business in the condition in which it was at that time. Now, with regard to it, my lord, on page 8751, lines 22 to 27, Mr. Hallam's evidence was--

THE COMMISSIONER: 8751?

MR. KELLOCK: 8751, lines 22 to 27, my lord.

"A. But I did think it was advisable to warn certain people in the United States who were coming up here to ~~flat~~ float companies on the basis of junk machinery that the thing was being watched."

That is what Mr. Hallam says.

Now, on that same page my friend has something to say about another letter which Mr. Hallam wrote to the Industrial Secretary of the Vancouver Board of Trade on the 1st of November, 1934 on the situation of the silk mills in the country, in Canada, at that time, and it includes a confidential report Mr. Hallam

time.

Now, on page 882 of my friend's brief my friend has something to say about a letter of June 4th, 1930 from Mr. Hallam to the Silk Journal of America enclosing a copy of an article from the Financial Times of Montreal, and asking that it be reprinted and commented on. Now, the facts set out in the article correctly present the situation which had become an evil, and the sending out to the United States with the suggestion for re-publication was done certainly for the benefit of the silk industry of Canada, but it was also for the benefit of any manufacturing in Canada who might be approached to go into the business in the condition in which it was at that time. Now, with regard to it, my Lord, on page 8751, lines 22 to 27, Mr. Hallam's evidence was:

THE COMMISSIONER: 8751?

MR. KNOX: 8751, lines 22 to 27, my Lord.

"A. But I did think it was advisable to warn certain people in the United States who were coming up here to ~~[illegible]~~ float companies on the basis of just something that the thing was being watched."

That is what Mr. Hallam says.

Now, on that same page my friend has something to say about another letter from Mr. Hallam wrote to the Industrial Secretary of the Vancouver Board of Trade on the 1st of November, 1924 on the situation of the silk mills in the country, in Canada, at that time, and it includes a [illegible] extract as follows:

had made to one of the banks on the same subject, that report being dated the 19th of October, 1934. Now, there is no suggestion that the information in either the letter or the report was not accurate in any way or that they did not represent Mr. Hallam's best opinion which he gave to that official at that time. I don't know what the criticism is. If the secretary was asking for information the only question would be as to whether or not the information was correct, and even my friend does not suggest it was incorrect. It was information which had previously been prepared by Mr. Hallam and given to one of the banks in Canada. I do not get any credit anywhere in my friend's brief, my lord, for the two specific occasions in the evidence where we did definitely encourage the establishment of textile industries in Canada, and I just refer them to your mind, your lordship. One was the botany mill and the other was the Herbert Hosiery Company.

THE COMMISSIONER: Which?

MR. KELLOCK: Herbert Hosiery Company.

THE COMMISSIONER: Where do I find about them?

MR. KELLOCK: My lord, I am sorry, but I have not got a note of the evidence.

MR. McRUER: The botany mill was not in competition with anyone here.

MR. KELLOCK: That was in Mr. Hallam's evidence. I will try and turn that up for your lordship.

THE COMMISSIONER: Are these silk mills?

MR. KELLOCK: No, the botany mill is yarn and Herbert Hosiery is, of course, a hosiery mill.

had made to one of the banks on the same subject, the report being dated the 14th of October, 1924. Now, there is no suggestion that the information in either the letter or the report was not accurate in any way or that they did not represent Mr. Palmer's best opinion which he gave to that official at that time. I don't know what the criticism is. If the secretary was asking for information the only question would be as to whether or not the information was correct, and even by friend does not suggest it was incorrect. It was information which had previously been prepared by Mr. Pelham and given to one of the banks in Toronto. I do not get any credit anywhere in my friend's behalf, my lord, for the two specific occasions in the evidence where we did definitely encourage the establishment of textile industries in Canada, and I just refer you to your mind, your lordship. One was the botany mill and the other was the Dupont rayon company.

[illegible]

[illegible]

THE COMMISSIONER: Since 10 I think that's three.

MR. PELLETIER: My lord, I am sorry, but I have not a note of the evidence.

MR. MORGAN: The botany mill was not in connection with my appeal here.

MR. [illegible]: [illegible]. I will try and turn that up for your lordship.

[illegible]

MR. MORGAN: No, the botany mill is part and Dupont Rayon is, of course, a textile mill.

Now, the last reference I want to make, my lord, is to page 284 of my friend's brief where he refers to exhibit 615. This is the Study Club Notes at the top of the page. I don't know just exactly what my friend's objection is. The facts are these notes were prepared and they were sent out to 25 or 30 federal members of parliament who had textile mills in their constituencies. Your lordship will find that on page 8317 of the evidence, and those particular members were members of a Study Club, and Mr. Hallam had been asked to address a meeting of that club and he furnished them with these Study Club Notes which he had prepared, and again my friend just refers to these things, this particular case, without saying just what the basis of the complaint is. Again he does not say there is anything inaccurate in them. As a matter of fact --

MR. McRUER: No, no, I am quite clear in what I said. I used it as an illustration of what organization in the industry could do, and were doing, and that the industry denies all right to labour to organize, but this is what the organized industry does in many different ways.

THE COMMISSIONER: Educates members of Parliament.

MR. KELLOCK: Educates members of Parliament; even my friend seems to think they need education, my lord, because he has delivered his brief to a good many of them.

MR. McRUER: Well, so did you.

MR. KELLOCK: My only criticism about that is --

Now, the last point I want to make, my Lord, is to page 483 of my friend's brief where he refers to exhibit 615. This is the study club notes at the top of the page. I don't know just exactly who [illegible] it. The notes are there where prepared and they were sent out to 30 or 40 [illegible] for [illegible] their consideration. Your Lordship will find this on page 8217 of the evidence, and those particular members were members of a study club, and Mr. Gillen had been asked to address a meeting of that club and [illegible] to have prepared, and again by friend [illegible] [illegible], this [illegible], I [illegible] just what the basis of the complaint is. [illegible] be less not say there is anything improper in [illegible] as a matter of fact --

Mr. [illegible]: No, no, I am quite clear in what I said. I used it as an illustration of what organization in the industry could do, and were doing, and that industry denies all right to labour to organize, but this is what the organized industry does in many different ways.

THE COMMISSIONER: Industries members of Parliament.

Mr. [illegible]: Industries members of Parliament; even my friend seems to think they need education, my Lord, because he has delivered his brief to a good [illegible] of them.

Mr. [illegible]: Well, so did you.

Mr. [illegible]: My only criticism about that is --

MR. McRUER: I got many requests for mine. Probably you didn't.

MR. KELLOCK: If my friend would put a note in the front of his brief which said that when he used "capital employed" he meant so and so and when he used "net profit" he meant so and so I would not have any objection.

MR. McRUER: My brief is quite clear on that. You do not need to harp back to that. My brief is clear and accurate. You have suggested many times that I have done what I did not do, and used language that is most surprising for you. My brief is perfectly clear on what I said. I used percentage of earnings to capital employed in the industry and when I use those words I mean those words.

MR. KELLOCK: If my friend can point in his brief to any place where he defines what he means by either of those terms I will withdraw my remark.

MR. McRUER: Define what I mean! Surely I do not need to refine the English language.

MR. KELLOCK: I cannot find it and I defy my friend to find it either.

THE COMMISSIONER: You both differ on what is the proper definition of both these terms, and I would not expect each one to be conceding the other one was right otherwise you would not be here at all.

MR. KELLOCK: My friend does not define his terms, but it is quite true, as your lordship points out--

MR. McRUER: I put many requests for wine. Probably you didn't.

MR. HALLOCK: If my friend would put a note in the front of his brief which said that when he used "capital employed" he meant so and so and when he used "net profit" he meant so and so I would not have any objection.

MR. McRUER: My brief is quite clear on that. You do not need to help back to that. My brief is clear and concise. You have suggested many times that I have done what I did not do, and used language that is most surprising for you. My brief is perfectly clear on what I said. I used percentage of earning to capital employed in the industry and when I use those words I mean those words.

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MR. HALLOCK: I cannot find it and I ask my friend to find it either.

THE COMMISSIONER: You both differ on what is the proper definition of both these terms, and I would not expect each one to be conceding the other one was right otherwise you would not be here at all.

MR. HALLOCK: My friend does not define his terms, but it is quite true, as your Lordship points out--

THE COMMISSIONER: He relies on evidence for what he puts there.

MR. KELLOCK: It is quite true, my lord, as your lordship pointed out, that when one looks at the exhibits one has the whole story.

THE COMMISSIONER: Of course.

MR. KELLOCK: But when one reads these terms in the brief without having the exhibits before him I submit that is a different thing.

MR. McRUER: Well now, surely --

THE COMMISSIONER: Just a minute; you have been arguing what is the right term and the wrong term. So far as I am concerned I have not made up my mind yet. Why do you tell me Mr. McRuer has acted unfairly in defining the term according to his notion of it? You may say it is a question of law as to what constitutes the proper definition of net profits and what constitutes the proper definition of working capital. You have your way of looking at it and you put it in your brief. That is alright, but he says you are wrong. He has his way of looking at it and he puts it in his brief. You say he is wrong. I don't see anything unfair on either side.

MR. KELLOCK: What I am talking about at the moment is that in my brief I have laid out -- I have used the words "net profit" and I have used the word "capital", and I have said what I mean by both terms. My friend has used these terms but he has not said what he means by them.

MR. McRUER: Oh no.

The Commissioner: Is counsel in a position to say when he will be prepared?

Mr. Pritchard: As I stated, Sir, before we proceed with the evidence, such that we have on the exhibits one has the whole story.

The Commissioner: Of course.

Mr. Kilmer: But when one reads these terms in the brief without having the exhibits before him I submit that is a different thing.

Mr. Pritchard: Well, then, perhaps -

The Commissioner: Just a minutes; you have been saying what is the right term and the wrong term. So far as I am concerned I have not made up my mind yet. Why do you call me Mr. Commissioner instead of Mr. Commissioner in defining the term according to his notes of it? You may say it is a question of law as to what constitutes the proper definition of not practice and what constitutes the proper definition of working capital. You have your way of looking at it and you put it in your brief. That is right, but he says you are wrong. He has his way of looking at it and he puts it in his brief. You say he is wrong. I don't see anything under on either side.

Mr. Pritchard: What I am talking about at the moment is that in my brief I have laid out -- I have used the words "net profit" and I have used the word "capital", and I have said what I mean by both terms. My friend has used terms which are not the same as those used by him.

Mr. Kilmer: -

MR. KELLOCK: If one has, as your lordship has, the evidence and the exhibits it is quite easy to see what is meant. All I am speaking about --

MR. McRUER: My friend has attempted time and again to say that I have done something I ought not to have done, and we have seen comments on it and that sort of nonsense, and my friend seems to think he is going to get some capital out of that, but he wants to be accurate. Now, take, for instance, page 224 of my brief, I deal with the Ayers Company, and this is just as an illustration.

" As shown by Exhibit 1064, the ratio of net revenue to capital employed in operations, from 1931 to 1935, was as follows:

1931	4.9%
1932	4.3%" --

Now, why is it necessary for anybody that understands the English language to ask for a definition of what I mean by that? I say "as shown by Exhibit 1064, the ratio of net revenue to capital employed in operations" was that. Now, what more is there that counsel could do, and yet to be abused that you have deceived, you have done this, that and the other thing that was iniquitous. I resent it because it is the first time I ever have in all my life -- and I have acted as counsel for the Crown in many capacities -- that I have been accused of anything of that sort. I pride myself in trying to be scrupulously fair when I act for the Crown in any capacity. I may make errors, but I do not conjure things up in order to make a case.

I may make errors of judgment, I am human in that way, but I have been as plain in that brief as I possibly could.

MR.KELLOCK: My friend has his contention, my lord, and I have submitted mine. If one looks at the exhibit-

THE COMMISSIONER: If you both left it there it would be alright, but when you start charging Mr. McRuer with unfairness --

MR. KELLOCK: Well, my lord --

THE COMMISSIONER: -- that is a different thing. We had Mr. Howson in the box and he was examined and cross-examined at some length. He made and produced these exhibits and he shows certain figures. Mr. McRuer adopts them. It is evidence and he is justified in taking them. You had your witnesses in the box and you also had figures. You take them and put them before me. There is no unfairness in that procedure on either side. That is what occurs in every case you have in court. What you seem to think is that your adversary should put in his brief your case as well as his own.

MR. KELLOCK: No.

THE COMMISSIONER: That is what you are saying. You had better go on to something else.

MR. KELLOCK: I do not want to leave it in the shape my friend leaves it. What I am submitting to your lordship is that any person in the position of your lordship who has heard the evidence and read the exhibits, and who has the exhibits before them, has all the information that is necessary to understand

I can only express of judgment, I am human in that sense but I have been as plain in that point as I possibly could.

MR. ROLLOCK: My friend has his convenience, my lord, and I have submitted mine. If one looks at the evidence

THE CHAIRMAN: If you both left it there it would be alright, but when you start shooting Mr. Tanner with uniforms --

MR. ROLLOCK: Well, my lord --

THE CHAIRMAN: -- that is a different thing. He had Mr. Howson in the box and he was examined and cross-examined at some length. He made use of those exhibits and he showed certain figures. Mr. Tanner adopts them. It is evidence and he is prejudiced in taking them. You had your witnesses in the box and you also had figures. You take them and put them before me. There is no difficulty in it at present on either side. That is what comes in every case you have in court. What you seem to think is that your adversary should put in his brief your case as well as his own.

MR. ROLLOCK: No.

THE CHAIRMAN: That is what you are saying. You had better go on to something else.

MR. ROLLOCK: I do not want to leave it in the shape my friend leaves it. What I am submitting to your lordship is that my person in the position of

[illegible]

my friend's brief, but the brief itself uses these accounting terms without remembering that to a person reading that who has not heard the evidence and got the exhibits before them, that is another thing.

THE COMMISSIONER: What about your brief?

MR. KELLOCK: I have, my lord, contended all thew way through --

THE COMMISSIONER: Your brief takes certain figures and uses certain terms, uses terms, for instance, of net costs, working capital and so on and anybody reading your brief alone would come to a different conclusion.

MR. KELLOCK: Anybody going to my brief would know when I say "net profits" what I mean.

THE COMMISSIONER: You gentlemen thought fit to give your briefs over to third parties. I suppose the third parties got both yours and Mr. McRuer's?

MR. KELLOCK: I suppose so, in many cases.

THE COMMISSIONER: What is the use of quarreling about it.

MR. KELLOCK: I am satisfied, my lord. Your lordship has my submission and I do not want to repeat it.

THE COMMISSIONER: The only thing I take objection to in your case is mentioning it here as if there was something unfair about it.

MR. KELLOCK: My lord, I do not want to repeat but when I say --

THE COMMISSIONER: Then, don't repeat. When counsel takes sworn evidence, sworn figures and puts them in a brief before me what is unfair about that?

to Ivan's ears, but he also [illegible] this
something terse without mentioning that to a person
reading that who has not heard the evidence and not
the exhibits before them, that is another thing.

THE CHAIRMAN: What count you [illegible]?

MR. MILLOCK: I have, my lord, considered all that
my learned ...

THE CHAIRMAN: [illegible]
and uses certain terms, uses terms, for instance, of
not costs, working capital and so on and anybody
reading your brief alone would come to a different
conclusion.

MR. MILLOCK: Anybody going to my brief can't know
when I say "not proved" what I mean.

THE CHAIRMAN: You contemplate though it
to give your briefs over to third parties. I suppose
the third parties get both yours and Mr. Mulock's?

MR. MILLOCK: I suppose so, in many cases.

THE CHAIRMAN: What is the use of quarrelling
about it.

MR. MILLOCK: I am satisfied, my lord. Your lord-
ship has my submission and I do not want to repeat it.

THE CHAIRMAN: The only thing I take objection
to in your case is mentioning it here as if there
was something sinister about it.

MR. MILLOCK: My lord, I do not want to repeat
but when I say --

[illegible]

MR. KELLOCK: So far as your lordship is concerned nothing, but so far as a third party is concerned the third party has not got all the information.

THE COMMISSIONER: Of course, in no case, but you say that the third parties got your brief as well so there you are; they have both sides.

MR. KELLOCK: I don't know that they did in all cases.

THE COMMISSIONER: You can take any factum filed in the Supreme Court and say it is unfair because it only gives one side of the case. Of course it only gives one side of the case.

MR. KELLOCK: That is true.

THE COMMISSIONER: Yet it becomes a public document.

MR. KELLOCK: I don't think any factum in the Supreme Court would use --

THE COMMISSIONER: Would use what? They would do exactly what is done here. Here are certain things sworn to by an expert and Mr. McRuer says "I am taking his figures". Why not? You do the same with your experts. Now, we need not argue this any longer. You better go on.

MR. KELLOCK: Well, my friend has occasioned the delay. I just want to refer your lordship to the last section of my brief where I make certain submissions, section "J" of my main brief. I submit, my lord,--

"That the textile industry constitutes an integral and valuable part of the industrial and economic

MR. [illegible]: So far as your learned is concerned [illegible], but so far as a third party is concerned the third party has not got all the information.

THE CONSTABLE: Of course, in no case, but you say that the [illegible] put your proof as to there you are; they have both sides.

MR. KELLOCK: I don't know that they did in all [illegible].

MR. CONSTABLE: You can take any finding that in the supreme court can say it is useless because it only gives one side of the case. Of course it only gives one side of the case.

MR. KELLOCK: That is true.

[illegible]

MR. KELLOCK: I don't think any finding in the supreme court would use --

THE CONSTABLE: Would use that? They would use exactly what is done here. Here one certain thing seems to by an expert and he, someone says "I am looking his witness". Why not? You do the same with your witness. Now, we need not argue this any longer. You better go on.

MR. KELLOCK: Well, my friend has occasioned the delay. I just want to refer your lordship to the last section of my brief where I make certain admissions, section "J" of my main brief. I [illegible] as [illegible]

[illegible]

"fabric of the country. In the wages it disburses, the taxes it pays, and in the amounts it expends for supplies, freight and other services it maintains a very substantial portion of the population of the Dominion. Very many villages and towns in Canada are absolutely dependent on it. Since the majority of the Textile mills are in the smaller centres of population, and provide work during the winter months as well as during the summer months, the industry is invaluable to the economic and social life of all these rural towns and surrounding countryside. It would be unwise from a national point of view to increase Canada's dependence on textile supplies from other countries.

In particular, because this industry as a whole was able to maintain and increase employment during the depression years, it played a vital part in the ability of Canada to weather the depression. The steadiness, variety and continuity", and there is an error there, my lord, "of the employment", instead of"unemployment", which makes a very material difference --"it has provided is impressive. The industry has to a considerable extent followed a policy of spreading employment throughout the year although this involves the piling up of stocks which cannot be sold for some time after their manufacture.

It reserves a greater proportion of the net value of production for its workers than any other indust

"other industry in Canada, with one exception. It pays wages from 60 to 90 per cent higher than the British textile industry; paid definitely"--

MR. McRUER: 90% higher?

MR. KELLOCK: Yes, you will find that in the evidence. "--paid definitely higher wages than in the United States until the N.R.A.; and pays wages immeasurably higher than those paid in Japan."

THE COMMISSIONER: Have I any evidence of the wages in Japan?

MR. KELLOCK: Yes, my lord. Your lordship has evidence, for instance, of two cents an hour; that is without allowances, and 73.71 including all allowances per diem. 73 cents.

MR. McRUER: Where is the evidence that it is 90% higher than in the British textile industry?

MR. KELLOCK: In one of the tarrff reports, Tariff Board Reports, there is a finding as to certain specific classifications starting at 60% and running up.

THE COMMISSIONER: Is your statement here justified; you say that our industry paid definitely higher wages than in the United States until the N.R.A.; is that right?

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: All the way along right up till 1934?

MR. McRUER: I don't think that statement is quite accurate either, because, as I recollect the evidence,

"other industry in Canada, with one exception.
It pays wages from 60 to 90 per cent higher than
the British textile industry; paid definitely--

Mr. MORGAN: 30% higher?

Mr. MORGAN: Yes, you will find that in the evidence,
--paid definitely higher wages than in the United
States until the N.R.A.; and some wages considerably
higher than those paid in Canada.

THE CHAIRMAN: Have I any evidence of this wage
in Canada?

Mr. [illegible]: Yes, as well, some [illegible] evi-
dence, for instance, of two cents an hour that is
[illegible] allowances, and 75.71 including all allowances
per diem. 71 cents.

Mr. MORGAN: Where is the evidence that it is 30%
higher than in the British textile industry?

Mr. [illegible]: In one of the tariff reports, textile
[illegible], [illegible] is a [illegible]
specific classifications starting at 60% and running
up.

Mr. [illegible]: Is your statement here justified;
you say that our industry paid definitely higher wages
than in the United States until the N.R.A.; is that
correct?

Mr. MORGAN: Yes, my lord.

THE CHAIRMAN: All the way along right up to
[illegible]

Mr. [illegible]: I don't think [illegible] is [illegible]
[illegible], [illegible], [illegible]

they were higher than the South --

THE COMMISSIONER: I am told 1931 only.

MR. KELLOCK: My lord, that statement is based on two exhibits, 1301 and 1302, and it refers to the period -- it is not quite accurate -- up to within approximately six months prior to the institution of the N.R.A.

MR. McRUER: Now, how is that worked because in the Northern mills the evidence was that wages in the United States were higher, and in the Southern mills they were lower. On the average between the two they ~~wer~~ had straddled along, sometimes higher and sometimes lower. That is my recollection.

MR. KELLOCK: It was very definitely higher than the South.

MR. McRUER: Yes.

MR. KELLOCK: Have you Mr. Beauregard's brief?

THE COMMISSIONER: I find in one of these graphs prepared by Mr. Whiteley it would show that the United States wages remained higher until on in 1931.

MR. KELLOCK: Is your lordship looking at page 211 of Mr. Beauregard's brief?

THE COMMISSIONER: Yes, where the two lines cross.

MR. KELLOCK: My statement should be corrected to cover the period from where the Canadian line is higher than the American. As your lordship sees it runs from some time in 1931 until some time in 1933.

THE COMMISSIONER: That is the Canadian line.

MR. KELLOCK: The Canadian line crosses and is

THE STENOGRAPHER: I am told that only.

MR. MOSCOVITCH: My Lord, that statement is based on two exhibits, 1801 and 1802, and it refers to the period -- it is not quite accurate -- to within approximately six months prior to the institution of the N.R.A.

Q. MR. [illegible]: Now, how is that worked because in the northern mills the evidence was that wages in the United States were higher, and in the southern mills they were lower. On the average between the two they was had averaged along, sometimes higher and sometimes lower. That is my recollection.

MR. [illegible]: It was very decidedly lower than the south.

MR. [illegible]: Yes.

MR. [illegible]: May you please, Commissioner's Lordship

THE [illegible]: I think in one of those graphs prepared by Mr. Bilsley it would show that the United States wages remained higher until on in 1931.

MR. [illegible]: Is that following [illegible] of Mr. Beauregard's brief?

THE [illegible]: Yes, where the two lines cross.

MR. [illegible]: My statement should be corrected to cover the period from where the Canadian line is higher than the American. As your Lordship sees it runs from some time in 1921 until some time in 1931.

THE [illegible]: That is the [illegible] line.

MR. [illegible]: The Canadian line [illegible] it

definitely higher than the American line at that point.

THE COMMISSIONER: Your statement in the form it is, that you pay definitely higher wages than in the United States until the N.R.A. is too broad.

MR. KELLOCK: That is too broad, my lord. It should be for that period.

THE COMMISSIONER: A period of about two years.

MR. KELLOCK: Prior to the N.R.A., and up to that time it is definitely accurate so far as the Southern wages are concerned. So it is only when you combine the North and South that requires amendment.

THE COMMISSIONER: What is that you say about the North and South?

MR. KELLOCK: The Canadian wages were higher than the Southern wages throughout up until the N.R.A. I am right in that, Mr. Whiteley?

THE COMMISSIONER: That is not so there. This United States line is the combined figure of both.

MR. KELLOCK: A combined figure.

THE COMMISSIONER: There is nothing here to show that the Southern wages were lower. They may have been but this graph does not show it.

MR. KELLOCK: When I was discussing my friend, Mr. Beauregard's brief, my lord, I analyzed the pages where Mr. Beauregard discussed the exhibits dealing with the North and South wages, and thatx was put in at the time that I was discussing those pages of Mr. Beauregard's brief, and my recollection is -- and

I am told I am right -- that the Canadian wages up until the N.R.A. were always higher than the Southern wages. Is that your recollection, Mr. Whiteley?

SECRETARY WHITELEY: I would think that is probably correct. There are exhibits covering that.

THE COMMISSIONER: Well, alright, go on.

MR. KELLOCK: I am sorry for that statement. It is too broad so far as the North is concerned for that earlier period --

THE COMMISSIONER: So far as the combined is concerned.

MR. KELLOCK: So far as the combined for the earlier period.

"Although it is a 'light industry' its average female wage is markedly higher than the wages paid females in other industries in Canada, and since it is a 'light industry' with all the year round employment, its wages for males are lower than the Canadian average for males, which average includes industries where the employment being intermittent the wage levels are higher. Over a period of nine years it has substantially maintained its nominal wages, and increased its real wages from 15 to 30%. At the same time it has not increased the real work required of its employees.

The profits made by that portion of the textile industry included in the Commission auditor's exhibits over the last ten years have been substantially less than the most modest estimate of what is a fair return on capital invested in manufa

"facturing enterprises. The exhibits cover approximately two thirds of the industry, and that the most successful portion, and do not include companies that disappeared from business in the same period or capital lost thereby. The exhibits of the Commission Auditor when properly interpreted show that the portion of the industry included in the exhibits earned 4.8% on the investment in the last ten years. In the five year period 1926 to 1930, these companies earned 5.4% on their investment and in the five year period 1931 to 1935, 4.2%.

The industry has been noteworthy for the degree in which it has refrained from paying out its earnings in the form of dividends having onthe contrary used the earnings to develop the industry, passing on to the public the benefits of large scale operations. The industry has kept step with modern invention and has maintained itself in a position to pass on to the buying public all resulting improvements in quality of merchandise and decreases in costs of production.

Any success met with in establishing fair trade practices such as proper marking of merchandise, elimination of discrimination in terms, and discriminatory rebates and allowances have been in the interests of fair and proper standards of doing business in the interests of the secondary manufacturer, retailer, worker and consumer. Attempts to stabilize prices have been confined to a comparative few of the large variety of products made

flourishing enterprises. The activity cover practically two thirds of the industry, and that the most successful portion, and do not include companies which discovered from expenses in the nature of capital lost thereby. The capital of the contributing members was correctly determined when that the portion of the industry included in the activity amount 4.9% of the investment in the industry. In the time year ended 1945 to 1950, these companies earned 5.4% on their investment in the five year period 1941 to 1945.

The industry has been noteworthy for the manner in which it has refrained from raiding out the profits in the form of dividends having of the country used the activities to develop the industry, working on to the public the benefits of large scale operations. The industry has kept abreast with modern invention and has maintained itself in a position to pass on to the buying public all resulting improvements in quality or manufacture and marketing in order to [illegible]

My success not only in cooperation with trade practices such as uniform marking of merchandise, elimination of discrimination in terms, and discriminatory rebates and allowances have been the interests of fair and or not abundance of [illegible] business in the interests of the economy consumer, retailer, worker and consumer. Attempts to stabilize prices have been confined to a comparative few of the large verdy or monopoly [illegible]

"by the Canadian textile industry. These were largely brought about by undesirable conditions in connection with highly competitive lines the price level of which had been forced below cost of production and resulted in no undue enhancement of price in any case.

The spread between the duty rates on the products produced by the Canadian textile mills and the duty rates, excise duties, and sales taxes paid on materials, machinery, consumable supplies and capital expenditures of the Canadian mills, is not now more than is necessary to preserve to the Canadian manufacturer that portion of the domestic market essential to him if he is to continue to maintain employment at the present level.

Competition from the British textile industries is persistent and powerful. Almost the whole increase in the United Kingdom trade with Canada since 1932 has been in textiles. And the Canadian industry is again meeting--"

MR. McRUER: Is that a correct statement that almost the whole of the increase in the United Kingdom trade with Canada since 1932 has been in textiles? The importations, Mr. Hooper tells me, shows it is down in textiles.

MR. KELLOCK: I have already discussed that, my lord, on page one of section "E" of my brief. The whole thing is laid out there in detail.

THE COMMISSIONER: Yes, it is on page one of section "E".

MR. KELLOCK: In the first sentence, my lord.

MR. McRUER: Oh yes, but that includes free goods.

MR. KELLOCK: Don't we have competition whether the goods are dutiable or free?

MR. McRUER: No, a lot of the stuff that you bring in is your raw material that is essential for the manufacture; it would be an injury to you to put a tariff on that.

MR. KELLOCK: I suppose my friend's argument would be, my lord, if you removed tariffs altogether we have no competition from imports.

MR. McRUER: No, no.

MR. KELLOCK: My friend's argument pressed to its logical conclusion would be if you remove the tariff altogether there would be no competition to the domestic industry from imports.

MR. McRUER: No, what is required as raw material for your industry, it would be an injury to your industry to put a duty on it.

THE COMMISSIONER: Just tell me this; are there any goods allowed in free which go direct to the consumer?

MR. KELLOCK: Yes, my lord.

THE COMMISSIONER: When I say the consumer I mean a man like yourself.

MR. KELLOCK: After passing through the distributor, of course, my lord, all these duty free imports, manufactured imports certainly would.

THE COMMISSIONER: What are they?

MR. McRUER: There are certain very fine count woven fabrics for shirtings and things like that.

MR. KELLOCK: In the first sentence, my lord.

MR. MEWBURN: Oh yes, but that includes free goods.

MR. KELLOCK: Don't we have competition whether the goods are dutiable or free?

MR. MEWBURN: No, a lot of the stuff that you bring in is raw material that is essential for the manufacture; it would be an injury to you to put a duty on it.

MR. KELLOCK: I suppose my friend's argument would be, my lord, if you removed tariffs altogether we have no competition from imports.

MR. MEWBURN: No.

MR. KELLOCK: My friend's argument pressed to its logical conclusion would be if you remove the tariff altogether there would be no competition to the manufacturer from imports.

MR. MEWBURN: No, what is required is raw material for your industry; it would be an injury to your industry to put a duty on it.

THE COMMISSIONER: Just let's see this; are there any goods allowed in free which do injure to the consumer?

MR. MEWBURN, K.C. [illegible]

THE COMMISSIONER: Upon I say the consumer I mean a man like yourself.

MR. KELLOCK: After passing through the distributor, of course, my lord, all those duty free imports, [illegible]

MR. MEWBURN: There are certain very fine sorts woven fabrics for shirtings and things like that.

MR. KELLOCK: My lord, on these two exhibits, 1354 and 1355 which will have to be typed, for instance--

THE COMMISSIONER: We haven't seen those yet.

MR. KELLOCK: No, my lord. I have analyzed it as between raw materials, partially manufactured and fully manufactured, being all duty free. Now, the fully manufactured, for instance, in 1930 manufactures of cotton were $2,674,000 --

THE COMMISSIONER: These are free, are they?

MR. KELLOCK: These are free, my lord.

THE COMMISSIONER: Well, that is alright.

MR. McRUER: Do you suggest you are making the character of goods that are imported free?

MR. KELLOCK: I have answered that question so often. That was not the question his lordship asked me.

MR. McRuer: Alright.

THE COMMISSIONER: That is a further question, though. You have there about $2,000,000 worth of wearable textile articles that come in duty free. Are they made in Canada at all?

SECRETARY WHITELEY: Some of this class, fully manufactured, is yarns.

THE COMMISSIONER: You have yarns in that?

MR. KELLOCK: Yes, it is manufactures of cotton.

THE COMMISSIONER: That is not what I am at at all. I say goes direct to the person who wears it.

MR. KELLOCK: Your lordship means fabrics. It would include both yarns and fabrics, that figure, but

they are not segregated. To answer your lordship's question fabrics that come in fully manufactured --

THE COMMISSIONER: And free of duty.

MR. KELLOCK: And free of duty, I would say -- and I think the point has come up from time to time -- that if the goods then were manufactured in Canada that sort of thing makes it impossible to continue manufacturing in Canada.

THE COMMISSIONER: It would, of course; at least, I would assume it would.

(page 18425 follows)

THE COMMISSIONER: Well, it would, of course. At least I assume it would but I was wondering if there are any such.

MR. KELLOCK: Oh, there have been instances where that thing taking place has eliminated the Canadian production.

THE COMMISSIONER: I cannot see a great many of them, since added to the yarn they only make $2,000,000.

MR. KELLOCK: That is in the one year.

THE COMMISSIONER: Well, any year.

MR. KELLOCK: That includes fully manufactured products of cotton.

THE COMMISSIONER: Yes, both yarns ---

MR. KELLOCK: Both yarns and fabrics $2,764,000 in 1930.

THE COMMISSIONER: Well, that is the best you can do.

MR. KELLOCK: Yes, my lord.

MR. McRUER: Is this statement in reference to almost the whole increase of United Kingdom trade in Canada since 1932 has been in Textiles - that is, the increase of our trade with the United Kingdom since the Ottawa agreement has been confined to an agreement in importations of textiles - does that include tops and things of that sort that are used for fabrication?

MR. KELLOCK: Yes, it does.

MR. MCRUER: So that if there had been a barrier put on that it would make it more difficult to carry

THE CHAIRMAN: Well, it would, of course, at least I assume it would but I was wondering if there are any such.

Mr. MALLOY: Or, there has been assurance that that thing being done has eliminated the question [illegible].

THE CHAIRMAN: I cannot see a great many of [illegible] added to the sum they only make $5,000,000.

Mr. MALLOY: That is a [illegible].

THE CHAIRMAN: Well, any year.

Mr. MALLOY: That [illegible] [illegible] [illegible] [illegible] of cotton.

THE CHAIRMAN: Yes, both years ---

Mr. MALLOY: Both years and [illegible] $1,700,000 in 1960.

THE CHAIRMAN: Well, that is the most you can do.

Mr. [illegible]: Yes, by [illegible].

Mr. MOTHER: Is this evidence in rebuttal to about the whole increase of United Kingdom trade in Canada since 1952 has been in textiles - that is, the increase of our trade with the United Kingdom since the Ottawa agreement was signed to an agreement in importations of textiles - does that include top and things of that sort that are used for fabricating?

Mr. [illegible]: Yes, it does.

Mr. MOTHER: So that if there had been a tariff put on that it would make it more difficult to carry

on in Canada the textile manufacturing industry.

MR. KELLOCK: Well, it is something that---

MR. McRUER: Well, you are complaining that there is an increase here in importations of textiles and it is an importation of stuff that you want, and increase.

MR. KELLOCK: It is not necessarily an increase in stuff that we want. I am saying it includes that. You cannot make that statement unless you analyse the figure.

MR. McRUER: There was a big increase in tops, was there not?. However, I just wanted to make it sure that it is not competitive textiles apparently that the increase was in.

MR. KELLOCK: I think if my friend analysed these two exhibits it will answer the question fully.

The next sentence I would like to add a word in here:

"And the Canadian Industry is again meeting increasing competition (in cotton) from the United States."

The word "increasing".

"Tariffs on textiles will always be necessary so long as other countries produce at lower cost or sell at prices lower than the cost of production in Canada. British Preferential tariffs, set at a point to equalize costs, are therefore required, and higher foreign tariffs are required to protect the export trade of British mills to Canada

as by Canada the British manufacturing industry.

Mr. EULCOCK: Well, it is something but---

Mr. [illegible]: Suppose we suggested that there was an increase here in importations of textiles and in the importation of stuff that you want, and increase.

Mr. Eulcock: It is not necessarily an increase in stuff that we want. I am saying it includes that. You cannot make that statement unless you analyze the figures.

Mr. [illegible]: There was a big increase in 1927, was there not? However, I just wanted to make it sure that it is not competitive textiles apparently that the increase was in.

Mr. Eulcock: I think if my friend analyzed these two exhibits it will answer the question fully.

The exact sentence I would like to read is word in order:

"And the Canadian Manufacturer in textile meeting increasing competition (in volume) from the United States."

The word "increasing".

"Tariffs on textiles will always be necessary so long as other countries produce at lower cost or sell at prices lower than the cost of production in Canada. British Preferential tariffs, set at half the rates of foreign duty, are therefore important and slight tariff cuts are proposed in order that Canada may share of British goods by Canada.

against exports from foreign countries.

When considering the operating results of the mills for the last five years, it must be taken into consideration that since the increase in tariffs in 1930 there have been several material reductions in the tariff rates or changes in the Customs Regulations in 1932, 1933, 1934 and 1935. In fact, conditions have materially changed from those existing shortly before the appointment of this Commission by reason of the further downward revision in the tariff in May 1936."

THE COMMISSIONER: And 1937.

MR. KELLOCK: And 1937.

"Accordingly, conclusions which might be drawn from a consideration of conditions existing prior to May 1936, are not applicable to conditions now existing.

The existing duties against importations of textiles from Japan, particularly those relating to artificial silk, are inadequate to prevent serious inroads being made by Japanese products in the Canadian markets. This situation is likely to become progressively more serious as time goes on aided, as the process will be, by successive decreases in the currency dumping duty by reason of the continued fall in the average exchange rates on the basis provided for in Exhibit 401. In more recent years the exchange

against exports from foreign countries.

When considering the operating results of the mills for the last five years, it must be borne into consideration that since the [illegible] in [illegible] there have been [illegible] fluctuations in the tariff rates or changes in the Customs regulations in 1922, 1924 and 1926. In fact, conditions were materially changed from those existing shortly before the equalization of duties occasioned by reason of the further commercial [illegible] in the tariff in May 1926.

[illegible] and 1927.

[illegible] Jan 1927.

Accordingly, comparisons which start or [illegible] from a consideration of conditions existing prior to May 1926, are not sufficient to conditions now existing.

The existing duties against importations of textiles from Japan, particularly those relating to artificial silk, are inadequate to prevent serious injuries being made by Japanese producers in the Canadian market. This situation is likely to become progressively more serious as time goes on since, as the process will be, by successive decreases in the surtaxes during only by reason of the continued fall in the average [illegible] rates on the basis provided for in Exhibit #31. In more recent years the [illegible]

rate has been lower than in earlier years and even now the yen shows definite signs of further decline.

Permitting imports on consignments from Japan to enter Canada free of currency dumping duty is an anomoly which results in loss of revenue to the Government, and when considered with the lack of any machinery on the part of the Canadian Government in Japan to check fair market values, opens the door to fraud and to unfair competition as between Japanese imports and the products of Canadian Textile Mills.

Fixed valuations for duty purposes are the most satisfactory means of equalizing low costs of production in other countries and Canadian costs of production."

There is nothing I could usefully add except to thank your lordship for your very careful and patient hearing.

THE COMMISSIONER: So then you have completed it?

MR. KELLOCK: Yes, my lord.

MR. McRUER: ~~If~~ My friend wants to get away and there is one matter I would like to mention before he goes - I am sorry Mr. Beauregard is not here this morning - but as my friend is going away and wants to get back to Toronto this afternoon, I would bring it up. In the presentation of my friend's case in regard to labour matters, certain statistics have been discussed by him, certain statistics have been discussed

rate has been lower than in earlier years and even now has yet shown definite signs of further decline.

Permitting the cost of necessaries from abroad to enter Canada free of customs duties, duty is an anomaly which results in loss of revenue to the Government, and when considered with the lack of any machinery on the part of the new Government in Japan to check this market value, opens the door to fraud and to unfair competition as between Japanese imports and the products of Canadian manufacture.

Fixed values on for duty purposes are the most satisfactory means of equalizing the costs of production in other countries and Canadian costs of production."

There is nothing I could usefully add to see to know your interest for your very careful and pertinent remarks.

The General Manager: So then you have complained to Mr. Kidner: Yes, my lord.

Mr. McGibbon: My friend wants to get away and there is one matter I would like to mention before he goes - I am sorry Mr. Scourgeard is not here this morning - but as my friend is going away and wants to get back to Toronto this afternoon, I would bring it up. In the presentation of my friend's case in regard to labour matters, certain statistics have been discussed by him, certain statistics have been discussed

by Mr. Beauregard and we have had filed the pay roll of all these different companies and I was going to suggest to your lordship that Mr. Whiteley immediately when we are through with the argument or before if he can, take all these statistics and digest them together with the results shown on the pay rolls, and that he might prepare something in the nature of a result of his analysis and send it to the respective counsels so that they might make comments on it before any correction that they might see fit, so that your lordship might have it to deal with when you write your report. While we might analyse these one way and analyse them another way, I think Mr. Whiteley is the most competent one of us all to make the correct analysis, but anything that was done of that sort I would like it to be submitted to the Counsel so that they might prepare some memorandum and file.

THE COMMISSIONER: I understand Mr. Whiteley has discovered, according to some of these figures given, there must be some mistakes.

MR. McRUER: I can easily see how mistakes would be made on either side in respect to analysing statistics. Mr. Whiteley is an expert on that and even after he has analysed them, before your lordship dealt with it and considered it, I would like my friends to have an opportunity of submitting any memorandum on it that they would desire.

THE COMMISSIONER: That is something that can be

by Mr. Beauregard and we have had filed the pay roll of all these different companies and I am going to suggest to your lordship that Mr. Whitney himself when he was through with the witness or before it he can, have all the totalities and signet them together with the results shown on the pay roll, and that he might prepare something in the nature of a result of his analysis and send it to the respective [illegible] that they might [illegible] any correction that they might see fit, so that your lordship might have it to deal with when you write your report. While we might analyse these one by one analyse them another way, I think Mr. Whitney is the most competent one of us all to make the correct analysis, but anything that was done of that sort I would like it to be submitted to the Council so that they could prepare some memorandum and file.

THE PRESIDENT: I mentioned Mr. Whitney was discovered, according to some of these figures given there must be some mistakes.

Mr. MACKAY: I can easily see how mistakes would be made on either side in respect to analysing statistics. Mr. Whitney is an expert on that and even after he has analysed them, before your lordship deals with it and considered it, I would like my friends [illegible] opportunity of submitting any memorandum on it that they may desire.

THE CONSIDERATION: That is something that can be

carried on while this Commission is not sitting, and Mr. Whiteley would be good enough to look after that.

MR. McRUER: Yes.

THE COMMISSIONER: Now, what is the next manner of proceeding?

MR. HEWARD: I am prepared to open my argument whenever you are ready, my lord.

THE COMMISSIONER: Well, I will give you a few minutes recess.

-- Adjourned at 12 P.M. for recess.

-- On resuming at 12.05 P.M.

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ARGUMENT BY MR. HEWARD:

MR. HEWARD: May it please the Commission, there is one thing that has been tried and conclusively proved in this Commission I submit and that is the patience of the Commissioner, and I should very much like to be allowed to add the tribute of Mr. Ballanytne and myself to those that have already been made to that patience and impartiality and courtesy with which Counsel have been treated throughout the hearings. I would also like to express our appreciation of the assistance given to us by the Secretary, Mr. Whiteley, and his Assistant, Mr. Rene DeCotret. We have called upon them at all times, at all hours I might say, for assistance in regard to the voluminous record and it has always been given most carefully and most

carried on while this Commission is not sitting, and Mr. Whitney would be good enough to look after that.

MR. MONDER: Yes.

THE COMMISSIONER: Now, what is the next manner of procedure?

MR. MONDER: I am prepared to open my arguments whenever you are ready, My Lord.

THE COMMISSIONER: Well, I will give you a few minutes rest.

-- adjourned at 12 . . for recess.

-- resumed at 2.30 P.M. .

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MR. MONDER: May it please the Commission, there is one thing that has been tried and conclusively proved in this Commission I submit and that is the evidence of the Commissioner, and I should very much like to be allowed to add the tribute of Mr. Hilsenrath and myself to those that have already been made to that patience and impartiality and courtesy with which Counsel have been treated throughout the hearings. I would also like to endorse her appreciation of the assistance given to us by the secretary, Mr. Whitney, and his assistant, Mr. Rene Decourcy. We have called upon them at all times, at all hours I might say, for assistance in regard to the voluminous records and it has always been given most cheerfully and most

efficiently and it has assisted us in our progress through the maize of exhibits and evidence in no small degree.

I also wish to express our appreciation of the cordial relations which have existed between all the Counsel concerned and ourselves. It is natural that there should be extreme differences of opinions and views and contentions between us, but I think all of us understand, as we properly should, that in criticizing those views and those contentions - one criticizing the other - there is no personal element involved.

Now, in view of the tests which have been made on your lordship's patience, all-enduring it seems to us, I am going to make a real effort not to be unduly long, and with that end in view I do not intend to deal with innumerable matters of detail arising in the evidence or with complaints or criticisms made in regard to isolated cases. These, I submit, were disposed of when they were raised in the course of the evidence, but it is intended rather, first, to place before the Commission certain considerations of principle which are, I submit, important in the determination of the matters referred to the Commission, and, secondly, to meet certain criticisms on matters of importance implied from the nature of the evidence sought to be adduced in the course of the examination, and the comments and remarks made by Commission Counsel during the hearings and other criticisms on matters of importance

efficiently and it has assisted us in our progress through the maze of exhibits and evidence in no small degree.

I also wish to express our appreciation of the cordial relations which have existed between all the Counsel concerned and ourselves. It is natural that there should be extreme differences of opinions and views and conclusions between us, but I think all of us understand, as we properly should, that in criticizing those views and those conclusions - one criticizing the other - there is no personal element involved.

Now, in view of the tests which have been made on your lordship's patience, all-enduring it seems to us, I am going to make a real effort not to be unduly long, and with that end in view I do not intend to deal with innumerable matters of detail arising in the evidence or with complaints or criticisms made in regard to isolated cases. These, I submit, were discussed at when they were raised in the course of the evidence, but it is intended rather, first, to place before the Commission certain considerations of principle which are, I submit, important in the determination of the matters referred to the Commission, and, secondly, to make certain criticisms on matters of importance implied from the nature of the evidence sought to be adduced in the course of the examination, and the comments and remarks made by Commission Counsel during the inquiry in their analysis of matters of importance

made in their briefs and their addresses and certain propositions put forward by them which are, I submit, unsound in the determination of matters submitted to the Commission.

My partner Mr. Ballantyne and I, with your lordship's permission, proposed to divide the argument between us as follows: I will deal on behalf of the Dominion Textile Company with questions of Return on Investment, Earnings in relation ~~of~~ to Sales and various matters related to these subjects - the question of the suspension of the operations of the Sherbrooke Rayon Division and Japanese competition in that connection, and Mr. Ballantyne will deal on behalf of both the Dominion Testile and Montreal Cottons with Labour conditions and work loads and wages and related subjects, and on behalf of Montreal Cottons with certain other matters which we feel should be discussed before your lordship.

Now, my lord, turning to Division 2, of our Factum whihh deals with "Return on investment" on page 4 and dealing with the "Bearing of returns on investment upon the question of Tariff protection," I do not propose to discuss the question as to which is the better policy - protection or free trade. That seems to me to have been discussed in every legislative and economic forum for at least a century, and it is too vast a subject, it seems to me, to be dealt with here and I do not think it is part of the reference in the Order in Council and, moreover, I do not think it is

made in their briefs and their addresses and certain propositions put forward by them which are, I submit, unsound in the determination of matters submitted to the Commission.

In paragraph 20, paragraph 21, with your Lordship's permission, proposed to strike the argument between us as follows: I will deal on behalf of the Dominion Textile Company with questions of Labour on investment, savings in relation to wages and various matters related to these subjects - the question of the suspension of the operations of the Dominions Woven Division and Dominions competition in that respect. Mr. Ballantyne will deal on behalf of both the Dominion textiles and Montreal Cotton with labour conditions and work loads and wages and related subjects, and on behalf of Montreal Cotton with certain other matters which we feel should be discussed before your Lordship.

Now, my Lord, turning to Division 2, of our Factum which deals with "Return on Investment" on page 4 and dealing with the "Bearing of returns on investment upon the question of tariff protection," I do not propose to discuss the question as to which is the better policy - protection or free trade. That has to me to have been discussed in every logical live and economic forum for at least a century, and it is too vast a subject, it seems to me, to be dealt with here and I do not think it is part of the reference to deal with it in detail and, however, I do not think it is

necessary to discuss that because the submissions of Commission Counsel are not that free trade should be adopted but that there should be a thorough lowering of protection inthe form of customs tariffs. However, a most important subject for consideration by the Commission is whether the protection afforded the Textile Industry is adequate , inadequate or excessive, and I submit that the return upon the investment in an industry is a most important element in the determination of the questions of whether the protection afforded to that industry by a customs tariff is adequate, inadequate or excessive.

"One of themain ultimate purposes of granting protection by means of a Customs Tariff is the creation of employment in the country establishing the tariff."

My friend says that is a confession, I say it is a truism, and we seem to be in agreement on the fact that that is one of the main ultimate purposes.

"It is elementary that in order to establish and maintain an industry which will provide such employment, capital must be obtained. In order to induce the investment of such capital, conditions must be such that the investor can expect the preservation of his investment and a reasonable return in the form of income from his investment."

And I will go even further and say that conditions in

necessary to discuss that because the conclusions of Commission Council are not sacrosanct trade should be adopted but that there should be a thorough investigation protection issue from of customs tariffs. However, a most important subject for consideration by the Commission is whether the protection afforded the textile industry is adequate, inadequate or excessive, and I submit that the return upon the investment in an industry is a most important element in the determination of the questions of whether the protection afforded to that industry by a customs tariff is adequate, inadequate or excessive.

"One of Canada's ultimate purposes of granting protection by means of a Customs Tariff is the creation of employment in the country establishing the industry.

My friend says that is a contention, I say it is a truism, and we seem to be in agreement on the fact that that is one of the main ultimate purposes.

"It is elementary that in order to establish and maintain an industry which will provide such employment, capital must be obtained. In order to induce the investment of such capital, conditions must be such that the investor can [illegible] a [illegible] in [illegible] from his investment."

And I will go more further and say that conditions in

Canada and countries similar to Canada are such that if it is put on the same footing as industries generally, the return on the investment must be such as to permit a reasonable expansion. I will deal with that more fully later.

"It follows, therefore, that the extent of the protection afforded to the industry must be such as will permit such preservation and such reasonable returns.

The question of the extent of the protection to be afforded to an industry must, of course, be determined in relation to that industry as a whole, and not in relation to any one company alone. It is pertinent and useful, however, to discuss the question of the bearing of return on investment upon tariff protection in relation to the Dominion Textile Company, Limited, because (a) that company and its subsidiaries constitute a large proportion of the textile industry, cotton and rayon, in Canada, and (b) the financial structure and history of Dominion Textile Company, Limited, and its alleged earnings have been specially and aggressively attacked by Commission counsel in that connection."

He takes exception to the statement in my brief that they are singled out for attack. Perhaps it is because we are prominent and large and that when he has been

[illegible] and [illegible] [illegible] if it is put on the same footing as industries generally, the return on the investment must be such as to secure a reasonable expectation. I will deal with that more fully later.

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Of course, therefore, that the extent of the protection afforded to the industry must be such as will permit such preservation and such reasonable returns.

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The question of the extent of the protection to be afforded to an industry must, of course, be determined in relation to that industry as a whole, and not in relation to any one [illegible] alone. It is pertinent and useful, however, to discuss the question of the bearing of return on investment upon tariff protection in relation to the Dominion Textile Company, Limited, because (a) that company and its subsidiaries constitute a large proportion of the textile industry, [illegible] [illegible], in [illegible], and (b) the financial structure and history of Dominion Textile Company, Limited, and its allied companies have been specially and exhaustively studied by Commissioners counsel in that connection."

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laying about him so thoroughly we have received a good many of the blows, but we do feel perhaps like a company used to feel in the front line trenches that a lot of the artillery is directed at our sector, and therefore we feel that a discussion of our financial situation and return on our investment is pertinent and useful.

"The matter of return on investment may be looked at in two ways, namely, (a) the ratio of earnings to invested capital,"

That is to say to the actual capital invested at cost.

"....and (b) the ratio of earnings to the value of the investment,...."

THE COMMISSIONER: You mean to the value of the investment as it may ---

MR. HEWARD: As it may exist at the time of the determination of the question to the capital invested at cost, that is what I mentioned in my first proposition, but in distinction to that, the value of the investment as it exists at the time of the termination.

THE COMMISSIONER: As it is found to be to-day.

MR. HEWARD: As it is found to be to-day, for instance, before this Commission. I deal with that at some length later on and cite authorities in support of the proposition.

Now, the proposition that I hope to establish

lying about him so tactfully we have received a good many of the blows, but we do feel perhaps like a company used to fuel in the front line trenches that a lot of the artillery is directed at our centre, and therefore we feel that a discussion of our financial situation and return on our investment is pertinent and useful.

"The matter of return on investment may be looked at in two ways, namely, (a) the ratio of earnings to invested capital,"

that is to say to the actual capital invested at cost,

"....and (b) the ratio of earnings to the value of the investment,...."

THE CHAIRMAN: You mean to the value of the investment as it may ---

MR. HOWARD: As it may exist at the time of the determination of the question to the capital invested at cost, that is what I mentioned in my first proposition, but in distinction to that, the value of the investment as it exists at the time of the transaction.

THE CHAIRMAN: As it is found to be to-day.

MR. HOWARD: As it is found to be to-day, for instance, before this Commission. I deal with that at some length later on and cite authorities in support of the proposition.

MR. McCARTHY: But I have in mind

before your lordship in regard to these two points are, first of all, and they are recited by the way on page 2 of my factum, Sections (a) and (b):

"That notwithstanding good management throughout its history, the earnings of Dominion Textile Company, Limited, in relation to its invested capital have been and are remarkably low having in view the risks attendant upon a manufacturing industry, and particularly upon a manufacturing industry of the character of the textile industry;

(b) that if the proper and more scientific method be adopted, namely, that of viewing earnings in relation to the value of investment, the earnings of the company have been and are entirely inadequate and do not represent a fair yield upon the value of the investment."

My friend says that is good advocacy to take an aggressive attitude of that kind. I say it is good advocacy because it is founded on the facts and the evidence.

Now, turning to page 4 of our Factum, my lord, the ratio of earnings of Dominion Textile Company Limited to invested capital. Now, in order to determine the amount of the invested capital it is first necessary to review briefly the history of the Company from the point of view of its capital structure.

"The Dominion Textile Company Limited was incorporated...."

before your Lordship in regard to these two points are first of all, and they are recited by the way on page 2 of my factum, sections (a) and (b):

"That notwithstanding good management throughout its history, the earnings of Dominion Textile Company, Limited, in relation to its invested capital have been and are remarkably low having in view the risks attendant upon a manufacturing industry, and particularly upon a manufacturing industry of the character of the textile industry,

(b) that if the proper and more scientific method be adopted, namely, that of allowing depreciation in relation to the value of investment, the earnings of the company have been and are entirely inadequate to and do not represent a fair yield upon the value of the investment."

My friend says that is good advocacy to take an aggressive attitude of that kind. I say it is good advocacy because it is founded on the facts and the evidence.

Now, turning to page 4 of our factum, my Lord, the ratio of earnings of Dominion Textile Company Limited to invested capital. Now, in order to ascertain the amount of the invested capital it is first necessary to review briefly the history of the company from the point of view of its capital structure.

"The Dominion Textile Company Limited was incorporated....."

as your lordship now well knows.

"....in 1905,...."

That is predecessor company of that name of the present company.

"....Dominion Textile Company Limited was incorporated in 1905 with a view to combining four textile companies then operating in Canada, namely, Dominion Cotton Mills Limited, Merchants Cotton Company Limited, Montmorency Cotton Mills Company, and Colonial Bleaching and Printing Company Limited."

Now, my lord, there are two very interesting documents which show the nature of the transaction. The first of them in order of date is Exhibit 330, the receipt from the Royal Trust Company to the Syndicate.

THE COMMISSIONER: You do not appear to refer to Exhibit 330.

MR. HEWARD: No, my lord, I omitted that by error. The receipt given by the Royal Trust Company to the Syndicate.

THE COMMISSIONER: Exhibit 230?

MR. HEWARD: No, Exhibit 330. Mr. Whiteley might check that, I am in doubt.

MR. McRUER: Exhibit 330 is a copy of the Syndicate Agreement.

MR. HEWARD: Now, that receipt is in fact an agreement. It is signed first of all by the Royal Trust Company and then on behalf of the Syndicate,

as your lordship now well knows.

"....in 1908,...."

That is predecessor company of that name of the present company.

"....Dominion Textile Company Limited was incorporated in 1905 with a view to combining four textile companies then operating in Canada, namely, Montreal Cotton Mills Limited, Montreal Cotton Co.pany Limited, Montmorency Cottonfilis Company, and Colonial Bleaching and Printing Company Limited."

Now, my lord, there are two very interesting documents which show the nature of the arrangements. The first of them in order of date is Exhibit 350, the receipt from the Royal Trust Company to the Syndicate.

THE COMMISSIONER: You do not appear to refer to Exhibit 350.

MR. MACKAY: No, my lord, I omitted that by error. The receipt given by the Royal Trust Company to the Syndicate.

MR. [illegible] Exhibit [illegible]. [illegible] cheque book, I am in doubt.

MR. MACKAY: Exhibit 350 is a copy of the syndicate agreement.

MR. [illegible]: Now, that receipt is in fact an agreement. It is signed first of all by the Royal Trust Company and then on behalf of the Syndicate,

so that it is their memo of the agreement which was entered into between the Royal Trust Company as Trustee for the Syndicate when they put up $1,000,000 for the purposes indicated in that receipt. I would like to read parts of that receipt or agreement:

"Received from the following gentlemen who have constituted themselves a syndicate for the purpose of incorporating the DOMINION TEXTILE COMPANY, Limited, the sum of one million dollars ($1,000,000), which said sum has been contributed by them as follows:"

Then follows the list of the contributors and the amounts.

"This sum of one million dollars ($1,000,000) is to be held by us in trust for the members of the Syndicate, in the proportion to their respective contributions as above set forth until the 1st February, 1905.

In the event of a majority of the shares..."

THE COMMISSIONER: While we are at it, will you give me the date of this. It is in blank here.

MR. HEWARD: It is blank on the original Syndicate Agreement. It is January, 1905.

THE COMMISSIONER: Just says here "Montreal, January."

MR. HEWARD: Montreal, January, 1905.

THE COMMISSIONER: No, date and no year.

so that it is their mess of the agreement which was entered into between the Royal Trust Company as Trustee for the syndicate when they put up $1,000,000 for the purposes indicated in that receipt. I would like to read parts of that receipt or agreement:

"Received from the following gentlemen who have constituted themselves a syndicate for the purpose of incorporating the Dominion [illegible] Company, Limited, the sum of one million dollars ($1,000,000), which said sum has been contributed by them as follows:

[illegible] follows the list of the contributors and the amounts.

"This sum of one million dollars ($1,000,000) is to be held by us in trust for the members of the syndicate, in the proportion to their respective contributions as above set forth until the 1st [illegible], 1906.

In the event of a majority of the sums..."

THE COMMISSIONER: While we are at it, will you give me the date of this. It is in evidence here.

MR. [illegible]: It is blank on the original syndicate agreement. It is January, 1905.

THE COMMISSIONER: Just some date mentioned, January."

[illegible]

THE COMMISSIONER: No date and no year.

MR. McRUER: I do not think there is any doubt about it - it was January, 1905.

MR. HEWARD: Because the offer had only been discussed a few weeks before.

MR. McRUER: Yes, and the correspondence that followed this that was sent out to the shareholders was dated, I think, 15th January, 1905.

MR. HEWARD: My copy says,"January, 1905."

THE COMMISSIONER: All right.

MR. HEWARD: I am sure it is 1905.

THE COMMISSIONER: Yes, I have no doubt at all.

MR. HEWARD: "This sum of one million dollars "($1,000,000) is to be held by us in trust for the members of the Syndicate, in the proportion to their respective contributions as above set forth until the 1st February, 1905.

In the event of a majority of the shares of each of the following Cotton Companies, namely," And then follows the names of the four constituent companies which later became The Dominion Textile Company.

"The Montmorency Cotton Mills Company,Limited, being transferred to us for the benefit of the said Syndicate,"

Now, that is for whom the Royal Trust Company was to get the shares of the constituent companies.

"...by the first of February, 1905, in accordance with the provisions of our circular letters

Mr. MORTON: I do not think there is any doubt about it - it was January, 1905.

Mr. MACKAY: Because the offer had only been discussed a few weeks before.

Mr. MORTON: Yes, and the correspondence that took place then. As near one to the conversations was dated January, 10th January, 1905.

Mr. MACKAY: My copy reads "January, 1905."

MR. CHARLES MOR: All right.

Mr. MACKAY: I can make it 10 1905.

"(d) ..... It is proposed to ..... for the members of the Legislature, in the proportion to their respective contributions as above set forth until the 1st February, 1906.

In the event of a majority of the shares of each of the following Companies, namely," and then follows the names of the four constituent companies which later became the Canadian Pacific Company.

"The Railway ..... being transferred to us for the benefit of the said syndicate."

Now, that is for when the Royal Trust Company was to get the shares of the constituent companies.

"...by the 1st of February, 1905, in accordance with the provisions of our circular letters

addressed to the shareholders of the said Cotton Companies, bearing dates 16th, and 29th, December 1904,"

So it must be 1905.

5 "....we are instructed by the said Syndicate to dispose of the said sum of one million dollars ($1,000,000) as follows, namely:-

1. To pay to the said DOMINION TEXTILE COMPANY LIMITED, the sum of five hundred thousand dollars,
10 ($500,000), in exchange for five hundred thousand dollars ($500,000) of its paid up preferred stock at par.

2. To pay to theDOMINION TEXTILE COMPANY, LIMITED
15 the balance of five hundred thousand dollars ($500,000), and to transfer to the DOMINION TEXTILE COMPANY, LIMITED, 15,200 shares of the Dominion Cotton Mills Company, Limited,

7,560 shares of the Merchants' Cotton Company
20 Limited,

5,005 shares of the Montmorency Cotton Mills Company Limited, and

1,500 shares of the Colonial Bleaching and Printing
25 Company, Limited. "

THE COMMISSIONER: In each case the shares constituted the majority?

MR. HEWARD: They constituted the majority, my
30 lord. As a matter of fact more were transferred.

"....upon the condition, however, that the

said DOMINION TEXTILE COMPANY LIMITED, shall forthwith re transfer to us all the said shares so received by it, to be held by us as collateral security for the payment of the bonds of the said Dominion Textile Company, Limited."

When the Dominion Textile Company got the shares of the constituent companies they were to be made the bonds which were subject to the mortgage, or hypothec in our Province, of securing the bonds of the Dominion Textile Company Limited.

"As a consideration for the foregoing, the said Dominion Textile Company, Limited, shall issue and allot to the said Syndicate, or its nominees, five million dollars ($5,000,000) of its common stock fully paid up and non-assessable, and one million, five hundred and thirty-four thousand five hundred dollars ($1,534,500) of its bonds, and seven hundred and eighteen thousand seven hundred dollars ($718,700) of its preferred stock, fully paid up and non-assessable."

THE COMMISSIONER: I think we can stop there.

-- The Commission adjourned at 12.30 P.M. to resume at 2.30 P.M.

-- The Commission resumed at 2.30 p.m.

Mr. HEWARD: When we adjourned, My Lord, I was reading from the receipt of January 1905, the agreement between the Syndicate and the Royal Trust Company, and I had dealt with the first few paragraphs which set out the acknowledgement of the $1,000,000 from the sixteen members of the syndicate and the undertaking by the Royal Trust Company that, in the event of a majority of the shares of the four companies being transferred to the Royal Trust Company for the benefit of the Syndicate, by the first of February 1905, the Royal Trust Company was to dispose of the million dollars first, by paying to the Dominion Textile Company Limited the sum of $500,000 in exchange for five hundred thousand dollars of its paid up preferred stock at par, and, secondly, by paying to the Dominion Textile Company Limited the balance of $500,000, and transferring to the Dominion Textile Company a majority--the figures in the second paragraph constitute just over a majority--of the outstanding capital stock of each of the four companies, those shares to be retransferred later by the Dominion Textile Company to the Royal Trust Company as trustee for the bond issues which were to be got out by the Dominion Textile Company; and as a consideration for that $500,000 and for the shares which they were to receive, the Dominion Textile Company was to issue to the Syndicate or its nominees $5,000,000 of its common stock, par value, and $1,534,500 of its bonds, and $718,700 of its preferred stock.

That was the point to which I had got in the reading of the receipt. The receipt or agreement then goes on:

-- The Commission resumed at 2.30 p.m.

Mr. Hanna: When we adjourned, My Lord, I was reading from the receipt of January 1905, the agreement between the syndicate and the Royal Trust Company, and I had dealt with the first two paragraphs which set out the acknowledgement of the $1,700,000 from the eleven members of the syndicate and the undertaking by the Royal Trust Company that, in the event of a majority of the shares of the four companies being transferred to the Royal Trust Company for the benefit of the syndicate, by the first of February 1908, the Royal Trust Company was to dispose of the million dollars first, by paying to the Dominion Textile Company limited the sum of $800,000 in exchange for five hundred thousand dollars of its preferred stock at par, and, secondly, by paying to the Dominion Textile Company limited the balance of $200,000, and transferring to the Dominion Textile Company a majority--the fifteen in the second paragraph substitute just over a majority--of the outstanding capital stock of each of the four companies. Those shares to be transferred free on the Montreal stock exchange" the Royal Trust Company as trustee for the bond issue which were to be got out by the Dominion Textile Company; and as a consideration for that $800,000 and for the shares which they were to receive, the Dominion Textile Company was to issue to the syndicate or its nominees 4,000,000 of its common shares, and 21,564,300 of its bonds, and 2216,700 of its preferred stock.

That was the point to which I had got in the reading of the receipt. The receipt or agreement then goes on:

"In the event of the said Syndicate transferring to the said Dominion Textile Company Limited a larger amount of shares in each or any of the said four cotton companies, than above mentioned--"

That is to say, mentioned in the second paragraph.

"--then the said Syndicate shall be entitled to receive an additional amount of bonds and preferred stock of the said Dominion Textile Company Limited, proportionate to the additional number of shares so transferred by them."

Obviously the Syndicate was going to use these to pay for the additional shares of the constituent companies. Then there is provision in regard to the limitation of the amount of preferred stock and bonds of the Dominion Textile Company, and there is this further provision:

"So long as the shares of the said four cotton companies, or any of them, thus acquired by the Dominion Textile Company Limited, are held by us, it is understood that we will give an irrevocable power of attorney to such person or persons as may be named from time to time by the board of directors of the said Dominion Textile Company Limited to vote on all such shares at all shareholders' meetings of the said four cotton companies, or any of them."

Then there is a defeasance paragraph at the end of the agreement. I intend to return to that last paragraph, because it has been referred to by my learned friend in argument. However, as I am reciting the facts I will not discuss it further. The defeasance

"In the event of the said creditors transferring to the said Dominion Textile Company Limited a larger amount of shares in excess of any of the said Dominion Textile Company above mentioned--"

That is to say, mentioned in the second paragraph.

"--then the said creditors shall be entitled to receive an additional amount of bonds and preferred stock of the said Dominion Textile Company Limited, proportionate to the additional number of shares so transferred by them."

Obviously the objective was going to use these to pay for the additional shares of the constituent companies. Then there is provision in regard to the distribution of the amount of preferred stock and bonds of the Dominion Textile Company, and there is this further paragraph:

"So long as the owners of the said four cotton companies, or any of them, who acquired by the Dominion Textile Company Limited, are held by us, it is understood that we will give an irrevocable power of attorney to such person or persons as may be named from time to time by the board of directors of the said Dominion Textile Company Limited to vote on all such shares at all shareholders' meetings of the said four cotton companies, or any of them."

Then there is a defeasance paragraph at the end of the agreement. I intend to return to that paragraph, because it has been referred to by my learned friend in argument. However, as I am reading the notes I will not discuss it further. The defeasance

paragraph is this:

"In the event of the majority of the shares in each of the aforesaid cotton companies not having been transferred to us for the purposes of the Syndicate as aforesaid, by the first day of February 1905, we will hold such shares as are transferred to us until the 15th of March, 1905, unless directed to return them to the original owners by the majority in value of the contributors to the said Syndicate fund of one million dollars ($1,000,000), and, in the event of the said shares being so returned, we will refund to the contributors to the said Syndicate fund the amount of their respective contributions thereto."

That agreement shows the transaction between the Syndicate and the shareholders of the Royal Trust Company, setting out the basis on which the shares of the constituent companies were to be effected.

The next document in my factum is exhibit 512, which is simply an extract from the minutes of a meeting of the shareholders of the Dominion Textile Company Limited, held on the 27th day of January, 1905. We find there that the meeting was held simply for the purpose of allotting the shares of the Dominion Textile Company Limited. First of all, it is for the purpose of approving an offer from the Syndicate to transfer the shares of the constituent companies, and it is also for the purpose of allotting the shares of the Dominion Textile Company Limited necessary to carry out the terms of the agreement of January 1905, which I have just read.

paragraph is this:

"In the event of the majority of the shares in each of the aforesaid cotton companies not having been transferred to us for the purposes of the agreements aforesaid, by the first day of February 1905, we will hold such shares as are transferred to us until the 15th of March, 1905, unless directed to return them to the original owners by the majority in value of the contributors to the said Dominion fund of one million dollars ($1,000,000), and, in the event of the said shares being so returned, we will return to the contributors to the said Dominion fund the amount of their respective contributions thereto."

That agreement shows the transaction between the Dominion and the shareholders of the Royal Trust Company, setting out the basis on which the shares of the constituent companies were to be divided.

The next document in my tender in evidence this, which is simply an extract from the minutes of a meeting of the shareholders of the Dominion Textile Company Limited, held on the 27th day of January, 1905. We find there that the meeting was held simply for the purpose of allotting the shares of the Dominion Textile Company Limited. First of all it is for the purpose of approving an offer from the Dominion to transfer the shares of the constituent companies, and it is also for the purpose of allotting the shares of the Dominion Textile Company Limited, [illegible] January 1905, which I have just read.

Reading from page 5 of my factum, with reference to that document:

"From this it will be seen that the company received from a syndicate consisting of eighteen persons--"

There is a mistake here, My Lord; that should be sixteen persons.

"(a) $500,000 in cash, for which the company issued to the syndicate 5,000 shares of preferred stock at par, $100 each, and

(b) substantial majorities of the outstanding shares of each of the four constituent companies and $500,000 in cash, in consideration for which the company issued to the syndicate $2,759,000 of the company's six per cent twenty year bonds, twelve thousand two hundred and twenty-two preferred shares (par value $100 each) and fifty thousand common shares (par value $100 each).

The shares of the constituent companies which were received at the outset by Dominion Textile Company Limited from the syndicate were--

24,467 shares of the capital stock of Dominion Cotton Mills Limited, out of a total issue of 30,336 shares,

14,118 shares of the capital stock of Merchants Cotton Company Limited, out of a total issue of 15,000 shares,

9,693 shares of the capital stock of Montmorency Cotton Mills Company, out of a total issue of 10,000 shares,

Reading from page 5 of my issues, with reference to that document:

"From this it will be seen that the company received from a syndicate a subscription of eighteen persons--"

There is a mistake here, my lord; that should be sixteen persons.

"(a) $500,000 in cash, for which the company issued to the syndicate 5,000 shares of preference stock at par, $100 each, and

(b) substantial equities of the underwriting syndicate of each of the four constituent companies and $500,000 in cash, in consideration for which the company issued to the syndicate $4,945,000 of the company's six per cent twenty year bonds, twelve thousand two hundred and twenty-two preferred shares (par value $100 each) and fifty thousand common shares (par value $100 each).

The shares of the constituent companies which were received at inception by Dominion Textile Company Limited from the syndicate were:

34,487 shares of the capital stock of Dominion Cotton Mills Limited, one of a total issue of 35,000 shares,

14,114 shares of the capital stock of Merchants Cotton Company Limited, out of a total issue of 15,000 shares,

9,000 shares of the capital stock of Montreal Cotton Company, out of a total issue of 15,000 shares

"and

2,368 shares of the capital stock of Colonial Bleaching and Printing Company Limited, out of a total issue of 3,000 shares."

Taking the four companies here enumerated, the percentages in relation to the shares indicated are, according to my calculations:

"Dominion Cotton Mills Limited	80.6 %
Merchants Cotton Company Limited	94.0 %
Montmorency Cotton Mills Company	96.9 %
Colonial Bleaching and Printing Company Limited	~~70.89%~~ 78.9 %"

The factum goes on:

"At later dates, Dominion Textile Company Limited acquired the remaining outstanding shares of the four constituents and the physical assets of those companies were transferred to Dominion Textile Company Limited."

Your Lordship will remember that in reagard to Dominion Cottons a lawsuit ensued with respect to a lease which had been made in the meantime of that company's plant. It went to the Privy Council and the lease was there upheld.

The COMMISSIONER: Was that in connection with the Dominion Cotton Mills ?

Mr. HEWARD: The Dominion Cotton Mills plant. The minority shareholders objected to the lease which has been made of the plant and the objection was fought through the courts to the Privy Council.

The COMMISSIONER: What was that case, do you remember ?

Mr. HEWARD: I believe it is cited as Amyot v.

3,556 shares of the capital stock of Colonial Bleaching and Printing Company Limited, out of a total issue of 3,000 shares."

Adding the four companies here enumerated, the percentages in relation to the shares indicated are, according to my calculations:

"Dominion Cotton Mills Limited	20.0 %
Dominion Cotton Company Limited	24.0 %
[illegible]	24.7 %
Colonial Bleaching and Printing	2.4 %

Mr. Labor states, Dominion Textile Company [illegible] of the four companies and the physical assets of these companies were transferred to Dominion Textile Company Limited."

Your Lordship will remember that in regard to Dominion Textile a lawsuit ensued with respect to a lease which had been made in the matter of that company's plant. It went to the Privy Council and the lease was there upheld.

The COMMISSIONER: Was that in connection with the Dominion Cotton Mills ?

Mr. HAWKS: The Dominion Cotton Mills plant. The minority shareholders objected to the lease which was been made of the plant and the objection was fought through the courts to the Privy Council.

The COMMISSIONER: What was that case, do you remember ?

Mr. HAWKS: I believe it is cited as Wyot v.

Dominion Textile. The judgment of the Privy Council was delivered in 1912. I will get the exact reference for Your Lordship.

Mr. McRUER: It is in the record somewhere. It was quoted in Montreal; we had the book there.

Mr. HEWARD: I will get the exact reference in the Law Reports.

Mr. McRUER: It would be 1912 Appeal Cases I suppose.

Mr. HEWARD: I continue with the factum:

"An examination of page 1 of Exhibit 1232--"

That page is a tabulation prepared by Messrs. Clarkson, Gordon, Dilworth and Nash, and put in evidence by Mr. Glassco, and it contains a statement as to securities issued upon the acquisition of the constituent companies.

"An examination of page 1 of Exhibit 1232, 'statement as to securities issued upon acquisition of constituent companies', shows the net value of the tangible assets received by Dominion Textile Company Limited as a result of the completed transaction, and shows also the amounts of bonds, preferred and common shares and cash issued or paid by Dominion Textile Company Limited for the acquisition of these tangible assets and for the acquisition of the intangible assets which the company also received as a result of the transaction. The cash just mentioned as being paid by the company included $177,109.91, which represented additional consideration paid by the company to certain minority shareholders who had not participated in the transaction at

Dominion Textile. The judgment of the Privy Council was delivered in 1918. I will get the exact reference for your Lordship.

Mr. LOUGHEED: It is in the record somewhere. It was quoted in Dominion; we had the book there.

Mr. HAMILTON: I will get the exact reference in the law reports.

Mr. MORRAS: It would be 1918 appeal cases 1 [illegible]

Mr. [illegible]: [illegible]

"In examination of page 1 of Exhibit 1329--

That page is a schedule prepared by Messrs. Clarkson, Gordon, Dilworth and Nash, and put in evidence by Mr. Clarkson, and it sets its a statement as to securities issued upon the capitalization of the [illegible]

"In examination of page 1 of Exhibit 1329, 'statement as to securities issued upon capitalization of constituent companies', shows the net value of the tangible assets, received by Dominion Textile Company Limited as a result of the completed transaction, and shows also the amount of bonds, preferred and common shares and cash issued or paid by Dominion Textile Company Limited for the capitalization of these tangible assets and for the capitalization of the intangible assets which the company also received as a result of the transaction. The cash just mentioned as being paid by the company included $177,109.31, [illegible] paid by the company to certain minority shareholders who had not participated in the transaction at

"the outset."

They finally turned in their shares.

The COMMISSIONER: They held off?

Mr. HEWARD: Yes, theyheld off and got that extra amount.

Mr. McRUER: Was that paid over and above the securities that were issued ?

Mr. HEWARD: At the outset, yes.

Mr. McRUER: They got a sort of premium to take the deal that was offered to the original shareholders. They were offered so much cash plus the securities which the original shareholders got.

Mr. HEWARD: That is the situation. It was an additional consideration given to certain of the minority shareholders who had not participated at the outset.

"It will be noted from page 1 of Exhibit 1232 that the last item on that page shows (balance representing net tangible assets received in respect of $5,000,000 par value common stock issued--$2,594,721.81'. It will be shown later that Dominion Textile Company Limited received valuable consideration other than tangible assets, but (leaving aside for the moment that part of the consideration which consisted of intangibles) it will be seen from page 1 of Exhibit 1232 that the par value of the shares for the issue of which the company did not receive tangible assets, which shares Commission Counsel has thought fit to designate as 'watered stock', was $2,405,278.19 (i.e., $5,000,000 less $2,594,721.81, viz., $2,405,278.19)

"instead of $4,500,000 as frequently contended by Commission Counsel during the hearings."

The COMMISSIONER: Where is that figure ?

Mr. HEWARD: It is in the third paragraph on page 6 of my factum. This is the way in which we arrive at it. The exhibit shows that this $5,000,000 of par value stock issued, less $2,594,721.81, was the value of the tangible assets, so that the remainder, $2,405,278.19 was the valuation put on the intangibles. In other words, that is the figure representing the intangibles, $2,405,278.19, instead of $4,500,000 as so often contended by Commission Counsel in the course of the hearing.

Mr. McRUER: That was the value that was set up in the books; $4,500,000 was goodwill.

Mr. HEWARD: That was the value that was set up originally through a mistake in the books and it was corrected six months later in the company's books. They had improperly set up the consideration taken over, and showed $4,500,000 as goodwill instead of $2,405,278.19.

The COMMISSIONER: The whole of that amount down to the 19 cents is to be set aside for goodwill?

Mr. HEWARD: Yes.

The COMMISSIONER: Altogether as good will ?

Mr. HEWARD: Yes.

Mr. McRUER: Originally $4,500,000 was set aside.

The COMMISSIONER: But Mr. Heward says that that was a mistake.

Mr. McRUER: They say it was a mistake, but I have a different argument on that.

Mr. HEWARD: I shall argue that point. The

$4,500,000 was certainly not in accordance with the document I have read.

The COMMISSIONER: What document ?

Mr. HEWARD: The receipt. They gave them shares which we contend had a value, in so far as common stock was concerned, of $2,594,721, including the $500,000 cash they gave.

Mr. McRUER: So that we may be accurate, do I understand you to say that that stood on the books at $4,500,000 for about six months ? Does Mr. Glassco agree with that ?

Mr. GLASSCO: The adjustment of these early entries was not actually completed until some time in 1912, and that was one of the sources of difference between Mr. Howson and ourselves. The correction was ultimately effected. It is a complicated piece of bookkeeping, but it is fair to say that in the end this error was properly corrected.

Mr. McRUER: It was corrected on the books--whether properly or not--in 1912.

Mr. GLASSCO: It was completed in 1912.

Mr. McRUER: But as a matter of fact the $4,500,000 stood on the books until 1912.

Mr. GLASSCO: It started in 1906--the first of the entries which might be looked upon as correct entries.

Mr. McRUER: But the fact is that the $4,500,000 stood on the books until 1912.

Mr. GLASSCO: Yes.

Mr. McRUER: I thought so.

Mr. HEWARD: The factum continues:

"It is not proper, however, to take into account only the tangible assets in the form

$4,500,000 was certainly not in accordance with the document I have read.

The CHAIRMAN: Only mortgage?

Mr. McNeil: The receipt. Yes, gave them security we received had a value, in so far as common sense has anything, [illegible] for [illegible] and [illegible].

Mr. Hodgins: So that we may be accurate, do I understand you to say that a bond on the books at $4,500,000 for about six months? Does Mr. [illegible] [illegible]?

Mr. McNeil: The adjustment of taxes early [illegible] in 1943, and that was one of the reasons of difference or, rather and correction. The correction was [illegible]. If [illegible] of bookkeeping, may it be fair to say that in the end this error was properly corrected.

Mr. McNeil: It was corrected on the bookmarket properly or not--in 1943.

Mr. Gladdoc: It was completed in 1943.

Mr. McNeil: But as a matter of fact the $4,500,000 stood on the books until 1943.

Mr. Gladdoc: It started in 1940--the first of the entries which might be looked upon as current [illegible].

Mr. McNeil: But the fact is that the $4,500,000 stood on the books until 1943.

Mr. Gladdoc: Yes.

Mr. Hodgins: [illegible]

Mr. McNeil: [illegible]

Mr. [illegible] [illegible]:

It is not proper, however, to take into account only the tangible assets in the town

"of plant, machinery, stock in trade, etc., represented by the shares of the constituent companies, acquired by Dominion Textile Company Limited, because that company in fact received intangible assets which soon proved to be of considerable value.

These intangible assets consisted of services in negotiating the acquisition of the shares of the four constituent companies, the selling at par of the bonds and the preferred stock of the new company, the benefit of unified management and control and of reductions in overhead expense, the elimination of excessive competition among the original companies, and similar factors which though intangible are nevertheless of real value and importance."

My learned friend has criticized my inclusion among the intangibles of the elimination of excessive competition, but I submit that it is of great value and importance to any manufacturing concern to have its operations properly coordinated and balanced. One of the advantages resulting from the amalgamation was pointed out to the shareholders of the new company at the first annual meeting held in May 1906. The reference will be found at page 5854.

The COMMISSIONER: Referring to the last paragraph on page 6, are those intangible assets all covered by goodwill ?

Mr. HEWARD: I presume that is what was meant.

The COMMISSIONER: And this is a detailed description of what you include ?

Mr. HEWARD: They appear to me to be among the intangible assets which that company did receive.

"of plant, machinery, stock in trade, etc., [illegible] by the source of the constituent [illegible], [illegible] by [illegible] [illegible] system, [illegible] [illegible] intangible assets which seem [illegible] to be of [illegible] value.

These intangible assets consisted of advices in regard to the acquisition of [illegible] shares of the four companies concerned, the selling at par of the bonds and the preferred stock of the new company, the benefit of unified management and control and of reduction in [illegible] expenses, the [illegible] [illegible] and similar factors which account intangible are nevertheless of real value and importance.

Mr. Leonard Fluno has criticized my inclusion that among the intangibles of the elimination of excessive competition, but I submit that it is of great value and importance to any amalgamation company to have its constituents properly capitalized and financed. One of the advantages resulting from the amalgamation was pointed out to the shareholders of the new company at the first annual meeting held in May 1908. The reference will be found at page 34.

The CHAIRMAN: Referring to the last paragraph on page 6, are these intangible assets still [illegible] by goodwill ?

Mr. MACKAY: I presume that is what was meant.

The CHAIRMAN: Is that is a detailed description of what you include ?

Mr. MACKAY: They appear to me to be among the intangible assets which that company did receive.

The COMMISSIONER: I merely wanted to make sure you were using that term interchangeably with the term goodwill.

Mr. HEWARD: Yes, My Lord. I have never been quite sure what is meant in bookkeeping parlance by goodwill, but I understand it is intended to represent intangibles.

The COMMISSIONER: It must be a strange thing when you begin with $2,000,000 and get it down to 19 cents. However, you have analyzed it here into its component parts:

> "the acquisition of the shares of the four constituent companies, the selling at par of the bonds and preferred stock of the new company, the benefit of unified management and control and of reductions in overhead expense."

These are all the things you call intangible assets and also goodwill.

Mr. HEWARD: Apparently they were entered in the books of the company as good will.

The COMMISSIONER: You put opposite them the same figure, the $2,000,000 odd.

Mr. HEWARD: Yes, My Lord. One of the advantages of coordination and the integration of the plants into one was shown at that meeting--page 5854 of the evidence--when it was stated that the management was able to manufacture different lines of goods "at those mills which are best adapted to produce the same, thereby getting longer runs of cloth and also saving on the constant changing of looms". That of course is most important, because it reduces the cost of production. As I said, Commission Counsel has criticized the statement contained in our factum

[Cont]

The Commissioner: I merely wanted to avoid giving the data among that been discussed with the witness previously.

Mr. Hallam: Yes, my lord. I have never been quite sure what is meant in broadcasting purchase by goodwill, but I understand it is intended to represent intangibles.

The COMMISSIONER: It must be a strange thing when you begin with $4,000,000 and get it down to zero. However, you have analyzed it here this (in evidence) [illegible]:

"The negotiation of the issue of the four constituent companies, the selling at par of the bonds and preferred stock of the parent company, the benefit of unified management and control and of reductions in overhead expenses."

These are all the things you call intangible assets and also goodwill.

Mr. FERGUSON: Apparently they were entered in the books of the company as good will.

The COMMISSIONER: You get opposite that the same figure, the $4,000,000 odd.

Mr. HALLAM: Yes, my lord. One of the advantages of coordination and the integration of the plants into one was known at that meeting--page 8004 of the evidence--when it was stated that the management was able to manufacture different lines of goods [illegible]

wherein we refer to the elimination of excessive competition.

The COMMISSIONER: You are looking at it from two different points of view. He is looking at it from the point of view of the consumer and the tariff, and you from the point of view of good business.

Mr. HEWARD: I propose to deal later with that whole question, but I submit in the meantime that elimination of excessive or unhealthy competition is an advantage to all concerned, the consumer, the worker and the owner of the business. I shall develop that at some length.

The COMMISSIONER: That is a legitimate argument. Of course, you put in the word excessive, and that leaves room for considerable difference of opinion.

Mr. HEWARD: I emphasize that word because I think that excessive or unhealthy competition is bad for everybody.

> "Intangibles are recognized by law and accepted in business as valid payment for stock. There is no reason why they should not be so recognized and accepted. If property is a good payment for stock, it is immaterial whether that property be corporeal or incorporeal. Services are also recognized and accepted as good payment for stock. The exact value of such intangibles of course cannot be ascertained, and in such case the well-known principle applies, that in the absence of fraud the value put upon the property by the parties is decisive."

And for the whole of what the Syndicate turned

wherein we refer to the elimination of excessive [illegible] profits.

The COMMISSIONER: You are looking at it from two different points of view. He is looking at it from the point of view of the promoter and the bankrupt, and you from the point of view of [illegible] business.

Mr. HANNAH: I propose to deal later with that whole question, but I submit in the meantime that elimination of excessive or unduly concealed is an advantage to all concerned, the promoter, the [illegible] and the owner of the business. I should develop that at some length.

The COMMISSIONER: That is a legitimate argument. Of course, you put in the word excessive, and that leaves room for considerable difference of opinion.

Mr. HANNAH: I appreciate that word because I think that excessive or unduly concealed is bad for everybody.

"Intangibles are recognized by law and accepted in business as valid payment for stock. There is no reason why they should not be so recognized and accepted. If property is a good payment for stock, it is immaterial whether that property be corporeal or incorporeal. Services are also recognized and accepted as good payment for stock. The exact value of such intangibles of course cannot be ascertained, and in such case the well-known principle applies, that in the absence of fraud the value put upon the property by the parties is decisive."

And for the whole of what the Syndicate [illegible]

over to the company, aside from the $500,000 which they turned over for preferred stock--the value which was put on that was certain bonds and certain shares, 50,000 shares of common stock. I have referred to certain cases, parts of which I shall be glad to read. But, I repeat, it is a well-known principle that in the absence of fraud it is the value put upon the property by the parties that governs.

The COMMISSIONER: I do not see how any other principle could be applied.

Mr. McRUER: I have never quarrelled with my friend's statement in regard to the application of that principle.

Mr. HEWARD: The factum goes on:

"In the transfer to Dominion Textile Company Limited in 1905 the parties put a value on these intangibles represented by the difference between the total value of the tangibles and the total par value of the securities issued, that difference amounting to $2,405,278.19. That these intangible considerations were indeed worth at least the $2,405,278.19 above referred to is clearly to be inferred from the fact that the year after the merger the net earnings of the new company available for dividends amounted to $279,562.60, or $117,594.85 in excess of the requirments for preferred dividends, and that in the following year the net earnings available for dividends amounted to $416,334.01, or $285,999.20 in excess of the requirements for preferred dividends. This improvement took

over to the company, aside from the $500,000 which they turned over for preferred stock--the value which was put on that was certain bonds and certain shares, 50,000 shares of common stock. I have referred to certain cases, parts of which I shall be glad to read. But, I repeat, it is a well-known principle that in the absence of fraud it is the value put upon the property by the parties that

The COMMISSIONER: I do not see how any other principle could be applied.

Mr. McMURRICH: I have never quarrelled with my friend's statement in regard to the application of that principle.

Mr. [illegible]: The Judge goes on:

"In the transfer to Dominion Textile Company Limited in 1905 the parties put a value on these intangibles represented by the difference between the total value of the tangibles and the total par value of the securities issued, that difference amounting to $2,405,278.19. That these intangible consideration were indeed worth at least the $2,405,278.19 above referred to is clearly to be inferred from the fact that the year after the merger the net earnings of the new company available for dividends amounted to $279,806.60, or $117,906.98 in excess of the requirements for preferred dividends, and that for the following year [illegible] for dividends amounted to $284,01, or $123,499.80 in excess of the requirements for preferred dividends. That improvement [illegible]

"place in the absence of any increase in tariff protection."

In fact, in the year 1906, as we have seen from the evidence already adduced, the British preferential tariff was reduced and the intermediate tariff was introduced for the first time, and was lower than the previous general tariff.

"While it is clear that throughout its history the company has enjoyed the benefit of good management, it is nevertheless a fair assumption to state that these improved earnings in the first and second years after the merger were made at a period before the good management could make its effects fully felt and that therefore the value of the consideration received by the company for the bonds, preferred and common stock which it issued was at least equal to the par value of those bonds and shares.

It is entirely fallacious, both on the documents and on the facts, to contend, as has been contended before this commission, that Dominion Textile Company Limited issued $5,000,000 par value of common stock for a consideration of $500,000 in cash. That is not the transaction evidenced by the documents nor is it in accordance with the facts."

I have given that transaction in summary, and it is this:

"Firstly: the Syndicate subscribed for $500,000 par value of preferred stock of the company at par and paid $500,000 cash therefor."

The COMMISSIONER: That is a complete and separate

"place in the absence of any increase in tariff protection."

In fact, in the year 1906, as we have seen from the evidence already adduced, the British preferential tariff was reduced and the intermediate tariff was introduced for the first time, and was lower than the [illegible] tariff.

"While it is clear that throughout its history the company has enjoyed the benefit of good management, it is nevertheless a fair conclusion to state that these improved earnings in the first and second years after the report were made at a period before the good management could make its effects fully felt and that therefore the value of the consideration received by the company for the bonds, preferred and common stock which it issued was at least equal to the par value of those bonds and stocks.

It is entirely following, both on the documents and on the facts, to conclude, as has been contended before this commission, that Dominion Textile Company Limited issued $[illegible] par value of common stock for a consideration of $600,000 in cash. That is not the transaction evidenced by the documents nor is it in accordance with the facts."

I have given that transaction in summary, and it is this:

"Firstly: the syndicate subscribed for $600,000 par value of preferred stock of the company at par and paid [illegible] cash [illegible]. The [illegible] transaction. That is a [illegible] and [illegible]

transaction ?

Mr. HEWARD: Yes.

The COMMISSIONER: The only question arises about the other $500,000.

Mr. HEWARD: In the second place the Syndicate transferred over 80 per cent of Dominion Cotton Mills Limited stock; over 94 per cent of Merchants Cotton Company Limited stock; 96.9 per cent of the Montmorency Cotton Mills Company stock; and 78.9 per cent of the Colonial and Bleaching Company Limited stock.

Mr. McRUER: You agree with me that the syndicate never owned these shares ?

Mr. HEWARD: I do not.

Mr. McRUER: The syndicate only agreed to buy the shares from the shareholders. The shareholders deposited the shares with the Royal Trust Company and if they got sufficient then the syndicate purchased the securities of the Dominion Textile Company to pay the shareholders; but until the Dominion Textile Company had issued the securities to pay the shareholders the syndicate never owned those shares.

Mr. HEWARD: The syndicate was entitled to those shares--I do not mean entitled to get possession but entitled to the benefit of those shares--as soon as they got into the hands of the Royal Trust Company.

Mr. McRUER: If they paid for them. They were not compelled to pay for them. When they got the shares in they got securities with which to pay for the shares, from the Dominion Textile Company. So that until the Dominion Textile Company has issued securities to pay for the shares the syndicate never got the shares, and it was really a purchase of shares

transaction ?

Mr. MELVIN: Yes.

The COMMISSIONER: The only question arises about the other 100,000.

Mr. MELVIN: In the second place the Dominion transferred over 50 per cent of Dominion Textile Limited stock; over 94 per cent of Canada's Cotton Company Limited stock; 94.7 per cent of Canadian Cotton, the Colonial and Electric Company Limited stock.

Mr. MONTGOMERY: You agree with me in that the syndicate never owned these shares ?

Mr. MELVIN: I do not.

Mr. MONTGOMERY: The syndicate only agreed to buy the shares from Dominion Textile. The syndicate deposited the shares with the Royal Trust Company and if they got sufficient then the syndicate purchased the securities of the Dominion Textile Company to pay the shareholders; but until the Dominion Textile Company had issued the securities to pay the shareholders the syndicate never owned those shares.

Mr. MELVIN: The syndicate was entitled to those shares--I do not mean entitled to get possession but entitled to the benefit of those shares--as soon as they got into the hands of the Royal Trust Company.

Mr. MONTGOMERY: If they paid for them. They were not compelled to pay for them. When they got the shares in they got securities with which to pay for the shares, from the Dominion Textile Company. So that until the Dominion Textile Company has issued securities to pay for the shares the syndicate never owned the shares, and if they couldn't pay for them

by the Dominion Textile Company, with the syndicate intervening.

Mr. HEWARD: I entirely disagree. The agreement on which this was based, signed by the Royal Trust Company and by David Yuile as chairman of the syndicate, says that:

> "In the event of the said syndicate transferring to the said Dominion Textile Company Limited a larger amount of shares in each or any of the said four cotton companies, than above mentioned, then the said syndicate shall be entitled to receive an additional amount of bonds and preferred stock of the said Dominion Textile Company Limited, proportionate to the additional number of shares so transferred by them."

In other words, the syndicate was purchaser from the shareholders and seller to the company. They may not have been able to get possession of them until they paid for them, but they were transferred to their nominee by the shareholders of the constituent companies, and possession was to be given up by the trustee to the syndicate or its nominees as and when they were paid for in a certain way. That is to say, they were held by the trustee for the benefit of the syndicate. The document makes it quite clear.

The COMMISSIONER: What document ?

Mr. HEWARD: Exhibit 331, My Lord.

The COMMISSIONER: That is the letter from the Royal Trust Company.

Mr. HEWARD: Yes. It is dated December 29, 1904, to the shareholders of the Colonial Bleaching and Printing Company Limited. It reads:

by the Canadian Pacific Company, also the Canadian Northern.

Sir. Edwin: I mean Canadian. Underground on which this was based, signed by the Royal Trust Company and by David Tulloch on behalf of the syndicate, is that.

"In the event of the said syndicate transferring to the said Dominion Terminals Company limited a larger amount shares in each or any of the said four outer companies, than above mentioned, then the said syndicate shall be entitled to receive an additional equal or bonds and preferred stock of the said Dominion Terminals Company limited, proportionate to the additional number of shares transferred by them."

In other words, the syndicate was prevented from the shareholders and selling to the company, they may not have been able to get possession of them until they paid for them, but they were guaranteed to the members by the shareholders of the constituent companies, and possession was to be given up by the trustee to the syndicate or its nominees as and when they were paid for in a certain way. That is to say, they were held by the trustee for the benefit of the syndicate. The document makes it quite clear.

Sir Lomer Gouin: What document?

Mr. Edwin: Exhibit 281, it said.

Sir Lomer Gouin: Is the Janes case the usual form?

Mr. Edwin: No. It is more complicated, and the shareholders are the usual documents and [illegible] Mr. Edwin.

"Dear"Sirs:

The Royal Trust Company is authorized to make the following offer on behalf of a syndicate, of which Mr. David Yuile is chairman."

Then follows the offer.

The COMMISSIONER: How is the offer set out in that letter ?

Mr. HEWARD: Perhaps I had better read it all:

"The Royal Trust Company is authorized to make the following offer on behalf of a syndicate, of which Mr. David Yuile is chairman, which has been formed for the purpose of acquiring capital stock in the following companies:

The Dominion Cotton Mills Company Limited,
The Merchants Cotton Company Limited,
The Montmorency Cotton Mills Company Limited,
The Colonial Bleaching and Printing Company Limited,

In accordance with the above authority we offer to purchase shares of your company, namely, the Colonial Bleaching and Printing Company Limited, at 166-2/3 per cent of their par value, and agree to pay for them as follows:-

three-fifths of the purchase price in 6 per cent bonds, and two-fifths in 7 per cent preferred stock of the new company to be formed."

Then there is provision in regard to certificates for fractional parts.

"The total bond issue of the new company shall not exceed an aggregate amount of $4,000,000. The company reserves the right,

"Gentlemen:

The Royal Trust Company is authorized to make the following offer on behalf of a syndicate, of which Mr. David Ruble is member.

Upon following the offer.

The undersigned: Now is the offer set out in that letter

Mr. Ruble: Perhaps I had better read it again:

"The Royal Trust Company is authorized to make the following offer on behalf of a syndicate, of which Mr. David Ruble is chairman, which has been formed for the purpose of acquiring capital stock in the following companies:

The Dominion Cotton Mills Company Limited,

The Canadian Textile Company,

The Consumers Cotton Yarn Company Limited,

The Colonial Manufacturing and Finishing Company.

In accordance with the above authority we offer to purchase bonds of the Dominion Colonial Manufacturing and Finishing Company Limited, at 105-7/8 per cent of their par value, and agree to pay for them as follows:

Three-fifths of the purchase price in 6 per cent bonds, and two-fifths in 7 per cent preferred stock of the new company to be formed."

Then there is provision in regard to certificates for fractional parts.

"The total bond issue of the new company shall not exceed an aggregate amount of $4,000,000. The company reserves the right,

"in addition to the above bond issue, to replace the existing bond issues of the Dominion Cotton Mills Company Limited and the Montmorency Cotton Mills Company Limited with bonds having like priority as regards the property of these respective companies and ranking equally with this issue as regards the general assets of the new company."

The preferred stock of the new company is not to exceed $2,500,000. Then:

"The syndicate shall subscribe and pay for at par preferred shares in the new company to an amount of $500,000. The syndicate will also invest $500,000 in the common stock of the new company."

The COMMISSIONER: That shows how the million dollars was disposed of, $500,000 in preferred shares and $500,000 in common stock.

Mr. HEWARD: Yes. It does not say how many shares were to be issued, and there is criticism of that by counsel, but I contend that that was not of importance to the shareholders of the old company because in any event they were receiving senior securities.

The COMMISSIONER: The securities of the Dominion Textile Company would seem to have been affected in this way. The vivifying strength of the new securities was the fact that a million dollars was being invested.

Mr. HEWARD: Yes, it was fresh capital. One of the serious difficulties of the constituent companies was their grave lack of working capital and these

"In addition to the above bond issue, to replace the existing bond issues of the Dominion Cotton Mills Company Limited and the Montmorency Cotton Mills Company Limited with bonds having like priority as regards the property of those respective companies and ranking equally with this issue as regards the general assets of the new company.

The preferred stock of the new company is not to exceed $4,500,000. Then:

"The syndicate shall subscribe and pay for at par preferred shares in the new company to an amount of $500,000. The syndicate will also invest $500,000 in the common stock of the new company."

The COMMISSIONER: That shows how the million dollars and Tiverton [illegible] and $500,000 in common stock.

Mr. MEREDITH: Yes. It does not say how many shares were to be issued, and there is criticism of that by counsel, but I contend that that was not of importance to the shareholders of the old company because in any event they were receiving equal securities.

The COMMISSIONER: The securities of the Dominion Textile Company would seem to have been affected in this way. The vivifying strength of the new securities was the fact that a million dollars was being invested.

Mr. [illegible]: They, it was [illegible] [illegible] the various directors of the [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

people came along with cash in their hands and put through this merger, supplying a million dollars in cash.

Mr. McRUER: This agreement does provide that if the majority is not forthcoming they may be returned.

Mr. HEWARD: Yes, decidedly. Perhaps I should read that. The Royal Trust Company on behalf of the syndicate stated:

> "It is understood that the syndicate shall withdraw from the purchase of the stock deposited should it not be able to acquire a majority of the stock in each of the aforesaid companies within ninety days from this date, and in that event all of the said shares shall be retransferred to the present holders in the proportion of their respective holdings."

As I stated, at a meeting of the shareholders of the new company, the chairman submitted an offer on behalf of the syndicate--Mr. Yuile was chairman --to carry out the transaction and get the new company to issue the shares. Perhaps it would be well to read the very opening paragraphs of the minutes.

(Page 17470 follows)

"The Chairman submitted an offer on behalf of a syndicate, of which Mr. David Yuile is Chairman"--

THE COMMISSIONER: These are the minutes of which company?

MR. HEWARD: The Dominion Textile Company Limited, held on the 27th of January, 1905, first meeting of shareholders, organization meeting, or, at least, organization to be done by the provisional directors, and this was a meeting of the shareholders.

" The Chairman submitted an offer on behalf of a Syndicate, of which Mr. David Yuile is Chairman, to subscribe for and take 5,000 shares amounting to $500,000 of the Preferred stock of this Company, at par, and to pay for the same in cash forthwith out of the $1,000, 000.00 on deposit in the hands of the Royal Trust Company, upon the allotment, and issue of such shares to the following persons in the following proportions, to wit"--

Then follow the 18 names of the syndicate.

"-- the said shares to include the two shares each subscribed for by the following persons to procure the incorporation of the Company".

Then follow the names of 12 persons who must have been provisional directors or applicants for incorporation, and then next following --

"And further to sell to this company":

This is the offer by the syndicate, "to sell to this company", and then follows a list of all the shares of the constituent companies which had been acquired, and of which I have given you the proportionate

"The Chairman submitted an offer on behalf of a syndicate, of which Mr. David Tuke is Chairman -

THE COMMISSIONER: These are the minutes of which company?

MR. HAMAR: The Dominion Textile Company Limited. Held on the 27th of January, 1909, first meeting of shareholders, organization meeting, or, at least, organization to be done by the provisional directors, and this was a meeting of the shareholders.

"The Chairman submitted an offer on behalf of a syndicate, of which Mr. David Tuke is Chairman, to subscribe for and take 5,000 shares amounting to $500,000 of the Preferred stock of this Company, at par, and to pay for the same in cash forthwith out of the $1,000,000.00 on deposit in the name of the Royal Trust Company, upon the allotment and issue of such shares to the following persons in the following proportions, to wit:--

Then follow the 18 names of the syndicate.

"-- the said shares to include the two shares each subscribed for by the following persons to qualify the incorporation of the company".

Then follow the names of 12 persons who must have [illegible]

[illegible]

"and further to sell to this company":

This is the offer by the syndicate, "to sell to this company", and then follows a list of all the assets of the company [illegible] had been taken [illegible] had at that. I have given you the [illegible]

percentages, and to pay, that is to sell to this company these shares of the constituent companies,

"And further to pay to this Company the sum of $500,000.00 in cash, being the balance of the $1,000,000 on deposit with the Royal Trust Company.

The whole in consideration of this Company issuing, allotting and delivering to the Royal Trust Company as nominees of the said Syndicate, 12,222 fully paid up and non-assessable preferred shares of this Company of the par value of $100.00 each(in addition to the 5,000 shares above-mentioned)"-- that is the 5,000 shares for which they were paying cash --

"--$2,759,000.00 of this Company's 6% twenty-year Bonds,forming a portion of a total issue of Bonds amounting to $3,370,500.00 to be made by this Company in the form and secured in the manner hereinafter indicated, and to the said Syndicate, or its nominees, 50,000 shares, equivalent to $5,000,000.00 of this Company's fully paid up and non-assessable Common Stock".

Then, it gives a long description of the bonds for several pages. Now, my lord, my submission is that the transaction described under "secondly" in each of these documents is one indivisible contract and cannot be split up. The syndicate transferred all it controlled. It controlled all these shares by this time through the Royal Trust Company.

proceedings, and to pay, that is to sell to this company these shares of the constituent companies,

"--- further to pay to this Company the sum of $600,000.00 in cash, being the balance of the $1,000,000 on account with the Royal Trust Company.

The whole in consideration of this company issuing, allotting and delivering to the Royal Trust Company as nominee of the said Syndicate, 12,884 fully paid up and non-assessable preferred shares of this Company of the par value of $100.00 each(in addition to the 5,000 shares above-mentioned)"-- that is the 5,000 shares for which they

"--$4,709,000.00 of this Company's 8% twenty-year bonds,forming a portion of a total issue of Bonds amounting to $8,320,000.00 to be made by this Company in the form and secured in the manner hereinafter indicated, and to the said Syndicate, or its nominee, 50,000 shares, equivalent to $5,000,000.00 of this company's fully paid up

Then, it gives a long description of the bonds for several pages. Now, by law, my admission is that the transaction described under "secondly" in each of these documents is one individual contract and

. The syndicate transferred all it controlled. It controlled all these shares by this time through the Royal Trust Company.

"The syndicate transferred all it controlled, namely, the shares of the constituent companies, plus $500,000 in cash plus the intangible considerations"-- to which I have referred -- "for the securities which they were obligated to deliver to their vendors plus 50,000 shares of common stock of the new Company".

Now, I submit that is a proper interpretation of that transaction from a legal point of view, and that is, in fact, what occurred.

" The syndicate was fortunate enough to acquire from the shareholders of the old companies at less than their real value the shares which they turned over with other assets to the Company".

I think that is clear from the results of the company shortly afterwards when it was put in proper hands.

THE COMMISSIONER: The results of the new company?

MR. HEWARD: Yes.

THE COMMISSIONER: Does that prove the shares of the old companies were worth more than were paid for them at the time?

MR. HEWARD: It does, in my opinion, I think -- not if the old companies were apart, independently.

THE COMMISSIONER: Is that consequent with the rest of your argument?

MR. HEWARD: I think so.

THE COMMISSIONER: You have pointed out all these benefits that you set out here, uniformity of management, reduction of overhead expenses, elimination of

excessive competition. It is only then the new value is there.

MR. HEWARD: Apart, independently, the shareholders got all the shares were worth because the companies, operating independently, were in difficulties, but brought together and properly co-ordinated they were given a big potential value as it turned out, so that while the syndicate may have paid less than they were worth potentially the company got value for the stock it issued, real value. Now, I think we have made the transaction clear there, but there was one point I wanted --

THE COMMISSIONER: Don't go on too fast. You cannot have it both ways. You cannot say you got these shares from the old companies at less than their real value and --

MR. HEWARD: I say the syndicate, I think, did, my lord.

THE COMMISSIONER: Got them from the old companies.

MR. HEWARD: At less than their real potential value if they were brought together.

THE COMMISSIONER: The potential value depended on the success of this new enterprise.

MR. HEWARD: Yes, my lord.

THE COMMISSIONER: You cannot look at what I might call the consequence of the old shares a year after, or five years after. It is their real value at the time they were bought.

MR. HEWARD: My lord, that is what I submit, they

have this real value --

THE COMMISSIONER: That is not what you are submitting. You are saying the direct opposite. You say "the syndicate was fortunate enough to acquire from the shareholders of the old companies at less than their real value the shares which they turned over"-

MR. HEWARD: Yes, my lord, I think so, because, you will see --

THE COMMISSIONER: No, I think substantially your real argument is they got these shares at the proper value and then due to the re-organization and the other things you point out there, good management, disappearance of excessive competition, and so on, then the new enterprise went on and produced more value.

MR. HEWARD: The real value, I submit, was all there except the intangibles.

THE COMMISSIONER: I say you are saying this because you want to convince me that, as a matter of fact, these old shares should be valued much higher than Mr. McRuer values them.

MR. HEWARD: My lord, I think they should be valued, the old shares should be valued at least at the value of the tangible assets which were behind them in the old companies.

THE COMMISSIONER: Did you not, in some cases, get these shares at quite a discount on the par value?

MR. McRUER: 50% in Dominion Cottons.

MR. HEWARD: Yes, and some others 163%. The shareholders -- the companies, operating independently,

have this real value --

THE COMMISSIONER: That is not what you are submitting. You are saying the direct opposite. You say the associate was fortunate enough to receive from the shareholders of the old companies at less than their real value the shares which they turned over.

MR. HOLDEN: Yes, my lord, I think so, because, you will see --

real argument is they got these shares at the proper value and then due to the re-organization and the other things you point out there, good management, disappearance of excessive competition, and so on, these for had accounting that be had phenomenal profit value.

MR. HOLDEN: The real value, I submit, was all there except the intangibles.

THE COMMISSIONER: I mean you are saying this because you want to convince me that, as a matter of fact, these old shares should be valued much higher than Mr. Scriver values them.

MR. HOLDEN: My lord, I think that would be valued, the old shares should be valued at least at the value of the tangible assets which were behind them in the old companies.

THE COMMISSIONER: Did you not, in some cases, get these shares at quite a discount on the par value?

MR. MORRIS: 50% in Dominion Cotton.

MR. HOLDEN: Yes, and some others 100%. The shareholders -- the promoters, naturally, [illegible]

had got into difficulties on account of their liquid asset position. I hope to develop the argument later and show your lordship that one of the reasons why they had got into this difficult position was the fact that they had been expending, particularly Dominion Cotton Mills Company Limited, expending too much money on plant.

THE COMMISSIONER: I suppose you call that bad management.

MR. HEWARD: I think that was bad management.

THE COMMISSIONER: What would have happened to these four sets of shares if this agreement had not taken place, and they had been allowed to carry on?

MR. HEWARD: I think that on account of their liquid position, and the excessive competition, which we show from the minutes was going on, that they would have been in serious trouble, these companies independently.

THE COMMISSIONER: And their value would have gone down instead of up.

MR. McRUER: Is that true of Colonial Bleaching, for instance, that they paid one hundred and sixty-six cents on the dollar for?

MR. HEWARD: Their liquid position was not good.

MR. McRUER: Well, Merchants, they paid a premium on that.

MR. HEWARD: They paid those in bonds and shares, but their liquid position was not good, but it must be remembered these things are relative. They had to do that because they were taking in four companies, and if they were giving one company so much in bonds

had got into difficulties on account of their liquid asset position. I hope to develop the argument later and show your lordship that one of the reasons why they had got into this difficult position was the fact that they had been expanding, particularly Dominion Cotton Mills Company Limited, expending too much money on plant.

THE CHAIRMAN: I suppose you call that bad management.

MR. FORTUN: I think that was bad management.

THE CHAIRMAN: That would have happened to these four sets of shares if this agreement had not taken place, and they had been allowed to carry on.

MR. FORTUN: I think that on account of their liquid position, and the excessive competition, which we since from the minutes was going on, that they would have been in serious trouble, those companies inevitably.

THE CHAIRMAN: As their wine would have sold down instead of up.

MR. MORTON: Is that true of Colonial Bleaching, for instance, that they paid one hundred and sixty-six cents on the dollar for?

MR. FORTUN: Their liquid position was not good.

THE CHAIRMAN: Well, inevitably, they made a profit on that.

MR. MORTON: They said those in boxes and shares, but their liquid position was not good, but it was not in comparison these things are relative. They had to do that because they were taking in four companies, and if they were giving just enough to make it worth

they had to give a relative portion in bonds to the other companies to treat them fairly. What I submit, your lordship, is that these assets, the physical value of the assets, their worth was shown on the books of the old companies, and that owing to the fact that these companies were operating independently and to the fact that they had spent a great deal on plant, particularly one of the companies, and to the fact that their liquid position was bad, there was a deficit.

THE COMMISSIONER: You mean the physical assets were there.

MR. HEWARD: The physical assets were there.

THE COMMISSIONER: If you divided the value in each of the four cases among the shares outstanding what would you arrive at?

MR. HEWARD: What is that?

THE COMMISSIONER: If you take in each case the value of the physical assets, and say now, how much is each share worth having regard to the aggregate in worth.

MR. HEWARD: They must have done that, your lordship, because they gave different treatment to the different companies.

THE COMMISSIONER: Well, yes, if that is what they did, if they simply took the physical assets say of the Colonial Bleaching and divided it into the number of shares, and then said now, each share is worth one dollar or $166, then, I can understand that, but when you say it is worth really more, when you say

they had to give a relative portion in bonds to the other companies to meet them fairly. What I submit, your lordship, is that these assets, the physical value of the assets, their worth was taken on the basis of the old companies, and that owing to the fact that these companies were operating independently and to the fact that they had spent a great deal on plant, particularly one of the companies, and to the fact that their liquid position was bad, there was a parity.

Now please gentlemen, the physical assets were there.

Mr. [illegible] Are they [illegible]?

THE CHAIRMAN: If you divided the value in each of the four cases among the shares outstanding what would you arrive at?

Mr. [illegible]

THE CHAIRMAN: If you take in each case the value of the physical assets, and say how, how much is each share worth having regard to the capacity in worth.

Mr. [illegible]: They must have done that, your lordship, because they gave different treatment to the [illegible].

THE CHAIRMAN: Well, yes, if that is what they did, if they simply took the physical assets any of the Colonial Bleaching and divided it into the number of shares, and then said now, each share is worth [illegible] or $100, then, I can understand that, but when you say it is worth really more, when you say

the shares are worth more than that then you are adding something to the physical assets to bring up your value.

MR. HEWARD: What I am saying is --

THE COMMISSIONER: You say the physical assets were there already, but the position of these companies, or some of them, was such that they were going to go from bad to worse.

MR. HEWARD: And that their shareholders were willing to sell out.

THE COMMISSIONER: Therefore, while the physical assets would be there the share value would have gone down. You stepped in and bought them and paid a certain figure. Now, any value that the rights you acquired there at that time gained later on was due to the new company, and the good management and the reduction of competition and overhead expenses and all those things you set out here.

MR. HEWARD: And also due to the fact they put up a million dollars to rectify the liquid asset position.

THE COMMISSIONER: Yes, certainly.

MR. HEWARD: There is this to be said, taken in the aggregate the par value of the shares issued to the shareholders of the old companies, the shares of the new company issued to the shareholders of the old companies taken in the aggregate, was approximately two and a half million dollars less than the net value of the physical assets of those constituent

the shares are worth more than that then you are adding something to the physical assets to bring up your value.

MR. HAMILTON: What I am saying is --

THE COMMISSIONER: You say the physical assets were there already, but the position of these companies, or some of them, was such that they were going to go from bad to worse.

MR. HAMILTON: And that their shareholders were willing to sell out.

THE COMMISSIONER: Therefore, while the physical assets would be there the share value would have gone down. You dropped in and bought them and paid a certain figure. Now, say value that the rights you acquired there at that time without later on you add to the new company, and the good management and the reduction of amortization and overhead expenses and all those things you set out here.

MR. HAMILTON: And also due to the fact they put up a million dollars to rectify the liquid assets position.

THE COMMISSIONER: Yes, correctly.

MR. HAMILTON: There is this to be said, that in the aggregate the par value of the shares issued to the shareholders of the old companies, the shares of the new company issued to the shareholders of the old companies taken in the aggregate, was approximately two and a half million dollars less than the net value of the physical assets of those companies

companies as shown on their books, even taking into consideration all their liabilities.

MR. GORDON: What is that?

MR. HEWARD: That the par value of the shares issued to the shareholders of the old companies was approximately two and a half million dollars less than the value, the net value, of the physical assets of the old companies as shown on the books of the old companies. I say that when new blood was put into it in the way of liquid capital, and the intangible considerations were added these properties were worth at least what they were shown on the books to be worth. For instance, I would take it that the new company could not probably have bought physical assets of that value for any less than they paid for them, if they were buying them new, or just buying them outright from another company. I think the shareholders of the old companies had to take less than the net value of the physical assets, as shown on their books, on account of the difficult financial position they had got into, particularly in view of the lack of liquidity, lack of current assets.

THE COMMISSIONER: When you use those words, that the syndicate acquired these shares of the old companies at less than their real value you mean that as represented by the physical assets?

MR. HEWARD: As represented by the physical assets, yes, my lord, as represented by the physical assets.

THE COMMISSIONER: How far do you stretch the word

"physical assets"?

MR. HEWARD: It would go to plant and machinery and inventory and tangibles, all tangibles.

MR. McNUAR: That is, physical assets as shown on the books.

MR. HEWARD: Yes, tangibles, my lord; perhaps I will put it that way because sometimes physical assets are used loosely to mean real estate and plant and machinery whereas I think it should include all tangibles. Now, in connection with this matter, my lord --

"--it should be pointed out that what the syndicate acquired consisted of shares of the old companies. These, therefore, had to be purchased from the shareholders of the old companies and not from the old companies themselves. It was, therefore, not a matter for corporate action on the part of the old companies, or of action by the boards of directors of the old companies, but a matter of private agreement between the syndicate and each of the selling shareholders".

That is quite clear from the documents we have read.

"If members of the syndicate had personally owned a controlling interest in each of the old companies, it might be argued that the syndicate had sold out the minority shareholders, but it is clear from the records of the constituent companies that that is not the case. Only six members of the syndicate were shareholders of the constituent companies and the holdings of

"these members were very small. The combined holdings of all the members of the syndicate prior to the submission of the offers of purchase to the shareholders of the constituent companies amounted to only $174,800.00 out of a total capital outstanding of $5,837,000.00; that is, their holdings amounted to approximately 2.9% of the outstanding capital of the constituent companies."

THE COMMISSIONER: Now, while we are at that. Were not some of the members of the syndicate directors of the constituent companies?

MR. HEWARD: Yes, I am just coming to that, my lord. Commission Counsel was therefore mistaken, I think, when he said on page 13784 and following of the evidence that Dominion Cotton Mills Limited, at the time the transfer was put through, was controlled by the very people who caused the Dominion Textile Company to be incorporated.

THE COMMISSIONER: Which company was controlled?

MR. HEWARD: Dominion Cotton Mills.

MR. McRUER: I think I was referring to the directors, not to the control, the majority on the board of directors.

MR. HEWARD: No, Mr. McRuer I think was mistaken there. I think he was referring at that time to the later transaction which occurred many years later when the physical assets were actually transferred, which was after all the shares had been acquired.

"these members were very small. The combined holdings of all the members of the syndicate prior to the submission of the offers of purchase to the shareholders of the constituent companies amounted to only $174,000.00 out of a total capital outstanding of $6,897,000.00; that is, their holdings amounted to approximately 2.9% of the outstanding capital of the constituent companies."

Q. Mr. Chairman: Now, while we are at that, were not some of the members of the syndicate directors of the constituent companies?

MR. [illegible]: Yes, I am just coming to that, my lord. [illegible] when he said on page 15294 and following of the evidence that Dominion Cotton Mills Limited, at the time the transfer was put through, was controlled by the very people who caused the Dominion Textile Company to be incorporated.

MR. CONNOLLY: Which company was controlled by [illegible]?

MR. [illegible]: Dominion Cotton Mills.

MR. MORDEN: I think I was referring to the [illegible] in the matter, the majority [illegible] shareholders.

MR. [illegible]: No, Mr. Morden I think was also there. I think he was referring at that time to the later transaction which occurred many years later when the physical assets were actually transferred, which was after all the shares had been acquired.

MR. McRUER: No, I was not referring to the shareholders' control because I never knew it. If I was right or wrong, what I was referring to was the Board.

MR. HEWARD: I think my learned friend was mistaken in that too, my lord.

MR. McRUER: I may have been mistaken there; I don't know, but I thought there was a similarity of directorates.

MR. HEWARD: No, I have the data on that.

THE COMMISSIONER: The question was which company.

MR. HEWARD: Dominion Cotton Mills Company.

THE COMMISSIONER: Were any of the members of the syndicate directors of the Dominion Cotton Mills Company?

MR. HEWARD: Yes, my lord. I will give you that now. I have extracted that from the record. Of the members of the syndicate who were shareholders of the old companies only five were directors; of the members of the syndicate on the Board of Montmorency Cotton Mills Limited only two out of seven directors were members of the syndicate; on the Board of Colonial Bleaching only one out of six and on the board of Merchants Cotton Company only one out of eight directors was a member of the syndicate, and on the board of Dominion Cotton Mills Company only one out of eight was a member of the syndicate.

Your lordship will also remember that it was

MR. MONTGR: No, I was not referring to the shareholders' control because I never knew it. If I was right or wrong, what I was referring to was the Board.

MR. [illegible]: I think my learned friend was mistaken in that too, my lord.

MR. MONTGR: I may have been mistaken there; I do know, but I thought there was a similarity of directorates.

MR. MERRIN: No, I have the data on that.

[illegible]

MR. [illegible]

THE CONSTITUTION: Have any of the members of the [illegible] of the Canadian [illegible] Company?

MR. MERRIN: Yes, my lord. I will give you that now. I have extracted that from the records. [illegible] of the [illegible] of the old companies only five were directors; of the members of the syndicate on the board of Dominion [illegible] directors were members of the syndicate; on the board of Colonial Discounting only one out of six and on the board of Manufacturers Cotton Company only one out of eight directors was a member of the syndicate, and on the board of Dominion Iron and Steel Company only one out of eight was a member of the syndicate.

Your lordship will also remember that it was

established during the course of my learned friend's argument that there was no interlocking between directorates of the old companies, and no person who is a director of more than one of the old companies. Then, again, just to clear up any misunderstanding, my lord --

"Commission counsel, during the last day", of the evidence. In my factum I have hearings, but that was the last day of the hearings when I wrote this factum. However, many days have elapsed since then -- the last day of the evidence --

"--referred to certain minutes of the constituent companies which had been produced, and suggested that as the officers named in such minutes were members of the syndicate the syndicate was actually in control of the constituent companies before the offer was submitted to the individual shareholders of the old companies. The records, however, show that that is not the case. The minutes referred to were those of the formal meetings held subsequent to the assumption of control through the purchase of the majority stock ownership by the syndicate."

THE COMMISSIONER: That was after having bought --

MR. HEWARD: After having bought all the shares.

THE COMMISSIONER: Then they went in and carried on.

MR. HEWARD: Carried on.

MR. McRUER: That was the end of the power of attorney from the Royal Trust Company.

established during the course of my learned friend's argument that there was no interfering between directors as of the old companies, and no person who is a director of more than one of the old companies. Then, again, just to clear up any misunderstanding, my lord --

"Commissioner Gunnell, during the last day, of evidence. In my recollection I have learning, but it was the last day of the hearings when I wrote this letter. However, many days have elapsed since then -- the last day of the evidence --

"--referred to certain minutes of the constituent companies which had been produced, and suggested that it was a theory which I had entertained were members of the executive the machinery was actually in control of the consolidated companies before the offer was submitted to the individual shareholders of the old companies. The records, however, show that that is not the case. The minutes referred to were those of the formal meetings held subsequent to the assumption of control through the purchase of the majority stock ownership by the syndicate."

THE COMMISSIONER: That was after having bought --

MR. [illegible]: After having bought all the shares.

THE COMMISSIONER: Then they went in and controlled.

MR. [illegible]: Controlled so.

MR. McKIM: That was the end of the power of attorney from the Royal Trust Company.

MR. HEWARD: Well, no, because you see the agreement provided for the transfer of the shares to the Dominion Textile Company and then the transfer back to the Royal Trust Company as trustee for the bond holders, and an irrevocable power of attorney from the trustee for the bond holders of the old company to the directors of the old company to vote the stock; so that was the machinery -- the directors of the new company, I mean, to vote the stock.

Then, I think Commission Counsel was also mistaken when he said on February 8th that the second last paragraph of the Royal Trust Company's receipt, exhibit 330, indicated that the shares held by the Royal Trust Company were to be voted to put through the merger. That is the paragraph which says that "so long as the shares of the said four cotton companies, or any of them"-- this is the agreement with the Royal Trust Company -- "so long as the shares of the said four cotton companies or any of them"-- that is acquired by the Dominion Textile Limited -- "are held by us"-- that is the Royal Trust Company --"it is understood we will give an irrevocable power of attorney to such person or persons as may be named from time to time by the Board of Directors of the said Dominion Textile Company Limited to vote on all such shares at all shareholders' meetings of the said four cotton companies, or any of them". That, of course, is how the voting control was exercised while these shares were held in trust for the bond holders.

ment provided for the transfer of the shares to the Dominion Textile company and then the transfer back to the Royal Trust Company as trustee for the bond holders, and an irrevocable power of attorney from the trustee for the bond holders of the old company to the directors of the old company to vote the stock so that was the machinery -- the directors of the new company, I mean, to vote the stock.

Then, I think Commissioner Counsel was also mistaken when he said on February 8th that the second last paragraph of the Royal Trust Company's receipt, exhibit 330, indicated that the shares held by the Royal Trust Company were to be voted to put through the merger. What is the provision which says that "so long as the shares of the said four cotton companies or any of them"-- this is the agreement with the Royal Trust Company -- "so long as the shares of the said four cotton companies or any of them"-- that is controlled by the Dominion Textile Limited -- were held by us"-- what is the Royal Trust Company --"it is understood we will give an irrevocable power of attorney to such person or persons as may be named from time to time by the board of directors of the said Dominion Textile Company Limited to vote on all such shares at all shareholders' meetings of the said four cotton companies, or any of them". That, of course, is how the voting control was exercised while these shares were held in trust for the bond holders.

MR. McRUER: Does that apply too to while they are held at any time?

MR. HEWARD: No, "so long as the shares of the said four cotton companies, or any of them"-- that is acquired by Dominion Textile Company Limited.

MR. McRUER: Yes.

MR. HEWARD:

They were not acquired by the Dominion Textile Company until after they were taken over by the syndicate. It is obvious that the purpose of this, my lord, was that the stock could be voted while it was held by the Royal Trust Company as security for the bonds.

MR. McRUER: You do not suggest it was not voted to put through the merger while it was held by the Royal Trust Company for the syndicate?

MR. HEWARD: To put through the merger?

MR. McRUER: Yes, they got a majority and then they went on with the merger.

MR.HEWARD: They issued stock immediately; as soon as the constituent companies' shares were transferred they issued stock, the stock of the new company to the syndicate, and the shares were transferred to the Dominion Textile Company Limited, the shares of the old companies were transferred to the Dominion Textile Company Limited and then the Dominion Textile Company Limited transferred them back to the Royal Trust Company to be held as security for the bonds. There was no need to vote the shares of the constituent companies to put through the merger because the merger was put through by the shareholders of the constituent companies

Q. MORRIS: Does that apply too to what they are held at any time?

MR. HAMILTON: No, so long as the shares of the said four cotton companies, or any of them -- that is required by Dominion Textile Company Limited.

[illegible]:

They were not acquired by the Dominion Textile Company until after they were taken over by the [illegible] it is obvious that the purpose of this, my Lord, was that the stock could be voted while it was held by the Royal Trust Company as security for the bonds.

MR. MORRIS: You do not suggest it was not voted we put through the merger while it was held by the Royal [illegible]

Q. LAMONT: To put through the merger?

MR. MORRIS: Yes, they got a majority and then they went on with the merger.

MR. HAMILTON: They issued stock immediately; as soon as the constituent companies' shares were transferred they issued stock, the stock of the new company to the syndicate, and the shares were transferred to the Dominion Textile Company Limited, the shares of the constituent companies were transferred to the Dominion Textile Company Limited and then the Dominion Textile Company Limited transferred them back to the Royal Trust Company to be held as security for the bonds. There was no need to vote the shares of the constituent companies to put through the merger because the merger was put through by the shareholders of the constituent companies

selling shares to the syndicate.

THE COMMISSIONER: Of course, they did not make the merger. That was their agreement. The four companies kept on living until the actual merger took place.

MR. HEWARD: Until the simultaneous transaction took place of the shares of the old companies being transferred to the new company and the shares of the new company being transferred to the syndicate and their nominees, and there was no need to vote the shares of the constituent companies for putting through the merger because the merger consisted of the holding of the stock which was sold by the shareholders as their own personal property.

THE COMMISSIONER: I understand all that. I think the only question is whether or not the members of the syndicate or any of them constituted a majority of the Board of any of the old companies.

MR. HEWARD: They did not, my lord.

THE COMMISSIONER: Or whether there was any interlocking between the directorates of the four companies.

MR. HEWARD: There was none, my lord. Now, my lord--

"The reason why the syndicate was able to acquire from the shareholders of the old companies at less than their real value"-- as I submit they did, less than their real value as represented by the tangibles -- the reason why they were able to acquire those shares at that value "which they turned over with other assets to the new Company is obvious from the evidence.

The four companies, operating independently,

affiliated stores or the business.

THE COMMISSIONER: Of course, they did not make the merger. That was their agreement. The four corporations kept on living until the actual merger took place.

MR. HUNTER: Until the simultaneous transaction took place of the shares of the old companies being transferred to the new company and the shares of the new company being transferred to the former stockholders, and there was no need to vote the shares of the constituent companies for putting through the merger because the merger consisted of the 3 letters of the stock which was sold by the shareholders as their own personal property.

MR. CHAMPION: I understand all that. I think the only question is whether or not the members of the syndicate or any of them constituted a majority of the board of any of the old companies.

MR. HUNTER: They didn't, my lord.

THE COMMISSIONER: Or whether there was any interlocking between the directorates of the four companies.

MR. HUNTER: There was none, my lord. Now, my lord, "The reason why the syndicate was able to acquire these the businesses at far all concerned at less than their real value" -- as I commit they did, less than their real value as concerned by the [illegible] -- for reason why they had to [illegible] based around at that time. [illegible] affiliated subsidiary of the [illegible] [illegible] [illegible].

The [illegible], speaking [illegible]

"had got into financial difficulties. In three out of the four, namely, Merchants Cotton Company, Montmorency Cotton Mills Company and Colonial Bleaching & Printing Company Limited, the net working capital showed a deficit. The net working capital position of the four companies taken in the aggregate showed a deficit of $108,414.45. An attempt to bring in fresh capital by the issue of individual company securities had been unsuccessful."

I will deal with that a little more fully in a moment.

" The earnings and dividend record of the old companies had been unsatisfactory. On December 31st, 1904" -- that is the end of the calendar year just previous to the acquisition of the control by the syndicate -- "on December 31st, 1904 Dominion Cotton Mills Company Limited showed an operating loss of $164,624.00 for the preceding ten months, the Merchants Cotton Company Limited a loss of $277,072.00 for the preceding twelve months, Montmorency Cotton Mills Company a loss of $148,265.00 for the preceding five months and Colonial Bleaching & Printing Company Limited a profit of only $477.00 in the preceding nine months."

Now, your lordship will note those are all different periods, but I am instructed that those are the periods elapsing since the beginning of the financial year of each of the companies, the then current financial year.

company, Montmorency Cotton Mills Company and Colonial Bleaching & Printing Company Limited. The net working capital showed a deficit. The net working capital position of the four companies in the aggregate showed a deficit of $108,414.46. An attempt to bring in fresh capital by the issue of individual company securities had been unsuccessful."

I will deal with this a little more fully in a moment.

" The earnings and dividend record of the old companies had been unsatisfactory. On December 31st, 1924' -- that is the end of the calendar year just previous to the amalgamation as has been stated by the syndicate -- "on December 31st, 1924 Dominion Cotton Mills Company Limited showed an operating loss of $164,024.00 for the preceding ten months, the Merchants Cotton Company Limited a loss of $227,092.00 for the preceding twelve months, Montmorency Cotton Mills showed a loss of $148,285.00 for the preceding [illegible] and Colonial Bleaching & Printing Company Limited a profit of only $427.00 in the preceding nine months."

[illegible] I am quoting [illegible] available, but I am [illegible] [illegible] company since the beginning of the financial [illegible] [illegible] financial year.

"Dominion Cotton Mills Limited had paid no dividend since 1902, Merchants Cotton Company Limited none for several years, Montmorency Cotton Mills Company only one payment of one per cent since 1901 and Colonial Bleaching & Printing Company Limited only one payment of six per cent since its incorporation in 1899".

Now, an interesting light, your lordship, is thrown on the financial and operating conditions of the largest of the old companies, the Dominion Cotton Mills Company Limited, by the minute which was read into the evidence, and which indicates the steady decline in its finances from 1897 on, the minutes of the annual meeting of the 9th of April, 1897, which are to be found in the evidence at pages 5732 and following. This is 1897.

"It is with considerable regret"-- this is the report to the shareholders -- "it is with considerable regret that we have to acknowledge that the year's business has been somewhat disappointing, owing to stagnation in business all over the Dominion caused to a great extent by the uncertainty in regard to the tariff, and from very severe and close competition in England, and more particularly with the United States."

Then, we see on page 5734 that the sales for the year amounted to $2,690,078.67 as against $3,059,892.88, a decrease of $369,814.21. They were showing a decrease in sales there. Then, in 1898, the evidence

"Dominion Cotton Mills Limited had paid no dividend since 1920, [illegible] Dividend none for several years, Montmorency Cotton Mills Company only one payment of one per cent since 1921 and Colonial Knitting & Finishing Company -Ltd had only one payment of six per cent since the incorporation in 1920".

Now, on increasing light, your Lordship, is thrown on the financial and operating conditions of the largest of the old companies, the Dominion Cotton Mills Company Limited, by the letter which was read into the evidence, and which indicates the steady decline in the firm's from 1907 on, the minutes of the annual meeting of the 8th of April, 1907, which are to be found in the evidence at pages 3728 and following. This is 1907.

"It is with considerable regret" -- this is the report to the shareholders -- "It is with considerable regret that we have to acknowledge that the year's business has been somewhat disappointing, owing to stagnation in business all over the Dominion caused to a great extent by the uncertainty in regard to the tariff, and from very severe and close competition in England, and more particularly with the United States."

Then, we see on page 3734 that the sales for the year amounted to $2,690,072.67 as against $2,589,388.88, a increase of $388,814.81. They were showing a decrease in sales there. Then, in 1890, the evidence

pages 5735 and following, we find the report to the shareholders containing this:

"For some time past your directors were under the impression that this company was not doing as well as they ought to do, and when the balance sheet for the first half of the year came out they were greatly disappointed with the results, and it became evident that some change would have to be made. It is always unpleasant to be compelled to make radical changes, but after very serious and matured deliberations the majority of your Board considered it necessary and in the interest of the Company to undertake the selling of its own goods".

Previously they had apparently had selling agents. Then, it goes on to say that this was communicated to the selling agents and they had resigned.

"Soon after this, Mr. Jackson, the General Manager, sent in his resignation, which was also accepted with regret. Your Board after considerable personal pressure on the president, induced Mr. C.R. Whitehead to accept the responsible position of General Manager, who, with Mr. Leslie G. Craig, as joint-manager, have since the 20th of September last been in full charge of the Company's affairs".

So we see there the change in selling policy and change in management in 1898, and then we come to this interesting point in the minutes of the meeting of the Board of the 27th of December, 1899. The evidence

pages 5755 and following, we find the report to the shareholders containing this:

"For some time past your directors were under the impression that this company was not doing as well as they could to do, and when the balance sheet for the first half of the year came out they were greatly disappointed. Not in itself, but it bears evidence that some change would have to be made. It is always unpleasant to be compelled to make radical changes, but after very serious and mature deliberations the majority of your board considered it necessary and in the interest of the company to undertake the selling of its own goods".

Previously they had apparently had selling agents. Then, it goes on to say that this was communicated to the selling agents and they had resigned.

"Soon after this, Mr. Dobson, the general manager, sent in his resignation, which was [illegible] considerable personal pressure on the part [illegible] induced Mr. G.R. Gilchrist to accept the responsible position of General Manager, who, with Mr. Donald C. Grain, as joint-[illegible] have since the 20th of September last been in [illegible] charge of the selling affairs.

[illegible] Mr. Gilchrist is certainly all [illegible] in 1906, had [illegible] [illegible] selling [illegible] in the place of [illegible] at the end of December, 1906. The [illegible]

is on page 5740.

" The Chairman then stated to the meeting of Directors that the Company had incurred very heavy expenditure in increasing and remodelling the mills and as a result of thex same the earning power of the mills was largely increased, but that this had been brought about at an expenditure of about one million dollars, which money had been borrowed from banks. The Chairman then stated further that it would be in the interest of the Company to make the loan permanent by means of the issue of first preference stock and after full discussion of the subject it was resolved:"

And then there is a resolution authorizing Parliamentary application for the creation of preferred shares. So there we find a statement of a million dollars expended which had been raised by borrowings from the bank, expended on plant. Then, at a meeting of the Board on the 26th of June, 1900, evidence page 5743, it says.--

THE COMMISSIONER: What year is that?

MR.HEWARD: 26th of June, 1900.

" The Company has during the past year greatly enlarged and improved its plants at Magog, P.Que, Hochelaga, and Ste. Annes, (Montreal) and Kingston, Ont., also at other points. In carrying out this work it has been compelled to make a temporary loan. In order to liquidate this loan the Directors after due consideration decided that it would be in the best interests of the company

At pp 1765.

" The Chairman then stated to the meeting of directors that the Company had incurred very heavy expenditure in increasing and remodelling the mills and as a result of this more the earning power of the mills was largely increased, but that this had been brought about at an expenditure of about one million dollars, which money had been borrowed from banks. The Chairman then stated further that it would be in the interest of the company to make the loan permanent by means of

full discussion of the subject it was resolved:

Then there is a resolution authorizing hypothecation for the creation of preferred shares.

So there we find a statement of a million dollars expended which had been raised by borrowing from the bank, expended on plant. Then, at a meeting of the board on the 20th of June, 1906, evidence page 3742, it says,--

THE COMMISSIONER: What year is that?

Mr.Hanna: 20th of June, 1906.

" The Company has during the past year greatly enlarged and improved its plants at Kogo, Longlake, Sault Ste. Marie, Espanola and Blind River, also at other points. In carrying out this work it has been compelled to make a temporary loan. In order to liquidate this loan the

Directors after due consideration decided that it would be in the best interests of the company

"to issue one million dollars Preference stock"--
And then it reports that the legislation,for which they had asked the approval of the shareholders,had been obtained and the stock authorized.

MR. McRUER: That meeting is what date?

MR. HEWARD: 26th of June, 1900.

MR. McRUER: 1900.

MR. HEWARD: It is a Board meeting, it says here, 26th of June, 1900, Board meeting, evidence, page 5743. Then, we come to this --

MR. McRUER: They had a profit of 9.4% on sales that year.

MR. HEWARD: Possibly, but it certainly was not enough to pay for their plant. Then, we come to the annual meeting of 1901 which is found in the evidence at pages 5745 and 5746, and in the report to the shareholders it is said:

> " Your Directors regret that the preferred stock of $1,000,000 to which the shareholders gave their consent at their last annual meeting has not been largely taken up. Only $163,800 was subscribed for; about one-fourth of this amount was taken up by the Directors. The public did not seem to question the security but throught that five per cent. wastoo low a rate of interest on an industrial stock. It may be that we shall have to offer it for a less price than par in order to realise thereon".

So there we have --

"to issue one million dollars Preference stock"--
and then it reports that the legislation, for which the
had asked the approval of the shareholders, had been
obtained and the work authorized.

Mr. McPhee: That meeting is what date?

Mr. Lucas: 20th of June, 1900.

Mr. McPhee: 1900.

Mr. McLean: It is a board meeting, it says here,
20th of June, 1900, board meeting, evidence, page
8746. Then, we come to this -

Mr. McPhee: They had a profit of 8.4% on sales
that year.

Mr. McLean: Possibly, but it certainly was not
enough to pay for their plant. Then, we come to the
annual meeting of 1901 which is found in the evidence
at pages 8745 and 8746, and in the report to the
shareholders it is said:

"Some [illegible] stock of $1,000,000 to which the shareholders
gave their consent at their last annual meeting
has not been formally taken up. Only $185,000
was subscribed for; about one-fourth of this
amount was taken up by the directors. The public
did not seem to question the security our
throughout that five per cent. warrants low a rate
of interest on an industrial stock. It may be
that we shall have to offer it for a long period
then put in order to realize thereon".

MR. McRUER: Just go on in that very meeting. There is a statement that profits before dividends amounted to $652,335 notwithstanding stoppage caused by changing machinery, and that there was 18.33% on sales.

MR. HEWARD: Yes, I think we have been through all that. I am not dealing with their profits on sales now. I am dealing rather with the frozen position which they gradually got into. Then, at the Board meeting on October 31,1901, the Board resolved --

> "That in view of the large expenditures incurred in putting the various properties of the company into first-class condition and also with the object of reducing the floating liabilities of the company not to pay the quarterly dividends heretofore paid on the 1st December"--

I think that confirms what I have just said that their position, their liquid position was ceasing to be liquid. It was getting frozen.

THE COMMISSIONER: All this must have been putting down the market value of their shares.

MR. HEWARD: Pardon?

THE COMMISSIONER: All this must have been putting down the market value of their shares.

MR. HEWARD: I think so, my lord; I think so because they were not paying dividends. Then, we begin to see on the 29th of January, 1902, tentative negotiations for mergers between one or more of the

Mr. Jenkins: Will it do if I have it written.

There is a statement that profits before dividends amounted to $[illegible],245 in and thereafter adjustments caused by changing machinery, and that there was $[illegible] or value.

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Mr. Hendon: Yes, I think we have been through all that. I am not dealing with their profits on sales now. I am dealing rather with the financial position which they gradually got into. Then, at the board meeting on December 31,1901, the board resolved --

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"That in view of the large expenditures incurred in perfecting the various properties of the company into first-class condition and also with the object of reducing the floating liabilities of the company not to pay the quarterly dividends heretofore paid on the 1st December"--

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I think that confirms what I have just said that their position, their liquid position was causing to be issued. [illegible]

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The COMMISSIONER: All this must have been putting down the market value of their shares.

Mr. Hendon: Pardon?

The COMMISSIONER: All this must have been putting down the market value of their shares.

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Mr. Hendon: I think so, my lord; I think so because they were not paying dividends. Then, we begin to see on the 29th of January, 1902, tentative negotiations for mergers between one or more of the

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existing four companies, because on the Board meeting of the 29th of January, 1902, the President of Dominion Cotton --

THE COMMISSIONER: What page is that?

MR. HEWARD: Page 5748.

" The President stated to the Board that he had received a proposal for the acquisition of the Merchants Cotton Co., by the Dominion Cotton Mills Co."

This is the Dominion Cotton Mills Company's president speaking.

"The plan proposed was for us to issue $3,200,000 7 per cent. preference cumulative stock, $1,700,000 to be offered to our shareholders pro rata at par. If not subscribed for to be sold to the public, and the balance $1,500,000 to be held in treasury to be exchanged for the stock of the Merchants Cotton Co. at par.

This plan was not looked upon with favour as it was thought it would be difficult to dispose of the $1,700,000 stocks."

But another plan was discussed and was left over, we find by the minutes.

THE COMMISSIONER: I can only sit until half past four so the recess won't be very long.

-- The Commission adjourned for a short recess.

(page 17495 follows)

--Quote (Mr. Prendergast, Member of the Dairy meeting of the 20th of January, 1922, the President of Dominion Cotton --

THE CHAIRMAN: What page is this?

MR. MACLEAN: Page 2748.

" The President stated to the Board that he had received a proposal for the amalgamation of the Merchants Cotton Co., by the Dominion Cotton Mills Co.

This is the Dominion Cotton Mills Company's proposal speaking.

"The plan proposed was for us to issue $3,500,000 7 per cent. preference cumulative stock, $1,700,000 to be offered to our shareholders pro rata at par. If not subscribed for to be sold to the public, and the balance $1,800,000 to be held in treasury to be exchanged for the stock of the Merchants Cotton Co. at par.

This plan was not looked upon with favour as it was thought it would be difficult to dispose of the $1,700,000 stocks."

But another plank was discussed and was left over, we find by the minutes.

THE CHAIRMAN (Mr.): I can only sit until half past four so the recess won't be very long.

-- The Commission adjourned for a short recess.

(page 17425 follows)

-- On resuming at 4.05 P.M.

MR. HEWARD: My lord, when we recessed I had just dealt with the meeting of the 29th of January, 1902, which dealt with the receipt of a proposal for the acquisition of the Merchants Cotton and the fact that it was declined by the Directors and another plan discussed but left over.

Then in the Annual Meeting of the 7th of April, 1902, which is to be found in the evidence at pages 5751 and following we find the following:

"At the beginning of the year the prospects were fairly good for a satisfactory business, but from various causes everything has gone against this expectation. First and moremost was the high price at which our cotton was purchased, which unfortunately and most unexpectedly soon after purchasing took a downward turn. Thiw reduction acted on the price of good and both the American and English markets became for awhile thoroughly demoralized."

"We had to meet the competition from both these markets and to make matters still worse a keen competition took place between mills making a similar goods in this country until prices got down below the cost of manufacturing. Then we lost nearly $20,000.00 by the breaking down of our engine at Halifax and loss through stoppage of machinery so that

— (a Recess at 4.00 p.m.)

Mr. BRANDT: My Lord, when we recessed I was just dealt with the meeting of the 20th of January, 1937, which deals with the receipt of a memorandum for the consideration of the Aerodrome Committee and the fact that it was declined by the directors and another plan discussed but left over.

Then in the normal meeting of the 7th of April, 1937, which is to be found in the minutes at page 1701 and following we find the following:

"At the beginning of the year the aerodrome was fully paid for a profitable business, but from various causes everything has been changed this country over. Right and moreover was the high price at which our cotton was purchased, which unfortunately and most unexpectedly soon after purchasing took a downward turn. This depletion acted on the price of goods, and both the American and English markets became for awhile unreasonably demoralized.

We had to meet the competition from both these markets and to make matters worse [illegible] mills making a similar goods in this country until prices got down below the cost of manufacturing. Then we lost nearly 300,000.00 by the breaking down of our engine at Halifax [illegible]

on the whole we have had a disastrous year.

"Your directors believing that the management was in some sense to blame, resolved on asking for their resignation, which after some slight delay was tendered and accepted. The Board after due consideration resolved to disassociate the management of the mills and the selling of the goods, as this was found to be one of our weak spots in the last management. It was therefore resolved that the new manager should look after the manufacturing, and that the selling be given to a firm in close touch with the buyer."

THE COMMISSIONER: That is the second change in management.

MR. HEWARD: Yes, in four years and the second change of selling policy in four years.

Then we find that in that year there was a loss on manufacturing account of $98,763.28 and that was before dividends. This was a loss on manufacturing account, and notwithstanding this three dividends were paid on the common and one dividend on the preferred with a total loss for the year of $312,840.87. Here again you see an impairment of the liquid position.

Then on the annual meeting of the 27th of April, 1903, we find a report of a satisfactory year under a new general manager but no common dividends were paid. That was a full year under the new general manager.

"We have now had a full year under the new General Manager, and your Board have much pleasure in stating that the results of the year has been very satisfactory...."

And then they paid a dividend on the Preference stock and did not pay any dividend on their common.

By the way, your Lordship, I would give your Lordship the reference to the pages for that - pages 5754 and 5755 of the evidence.

Then that was on the 27th of April, 1903. Then at a meeting of the Board of September, 1903, this Board meeting - evidence pages 5755 and 5756:

"The Vice-president reported to the Board that a meeting of cotton mill representatives had been called by Mr. Clouston, with a view of bringing about a better relationship between the three companies who are now competing with one another.

At this meeting a sub-committee had been appointed composed of Mr. James Crathern and Senator MacKay representing the Merchants Cotton Company, Mr. H.S. Holt, representing the Colonial Bleaching and Printing Company, Senator Forget and Mr.S.H. Ewing representing the Dominion Cotton Mills Company, and Mr. David Morrice, Sr."

Who does not seem to represent any of the companies.

MR. McRUER: Was not he the selling agent for

Dominion Cottons, when they changed their method of selling.

MR. HEWARD: No, I think at this stage, Stevenson and Blackadder. Was not he the selling agent for Montreal Cottons at one time in their history?

MR. McRUER: Selling agents for one of them.

MR. HEWARD: I think it was Stevenson. We dealt with that during my friend's argument and I have a note of it in my notes, at this time it was Stevenson and Blackadder. What I want to point out to you is this that Mr. Clouston who called this meeting together was the General Manager of the Bank of Montreal - later Sir Edward Clouston - and probably it is a fair inference I think it was called together because they were the bankers of the company and did not like their liquid position.

THE COMMISSIONER: I think we are called that way once in awhile.

MR. HEWARD: Once in a while we find ourselves face to face with emergencies of that kind. They appointed a sub-committee, as I said. Then that was in 17th September, 1903. At the Board Meeting of the 11th of December, 1903, evidence at pages 5761 and 5762 - this was a Board Meeting:

> "The President then reported that he had received a letter from Mr. Crathern, containing a memorandum from the directors of the Merchants Cotton Company which he handed to Secretary to read to the Board."

Dominion Cotton, when they changed their method of selling.

Mr. [illegible]: Do I claim to sell [illegible] and Dunkeddar. Has not be the selling agent for Montreal Cotton at the time in South Africa?

Mr. Morden: Selling agents for one of them.

Mr. McKay: I think it was Stevenson. We dealt with that during my friend's argument and I have a note of it in my notes, at this time it was Stevenson and Dunkeddar. What I want to point out to you is this that Mr. Gladstone who called this meeting together was the General Manager of the Bank of Montreal - Later Sir Edward Gladstone - and probably it is a fair inference I think it can called together because they were the bankers of the company and did not like their it did position.

The Court: Mr. McKay: I think we have called that any case in sanity.

Mr. McKay: Once in a while we find companies too to face with emergencies of that kind. They appointed a sub-committee, as I said. Then that was in 19th September, 1903. At the board meeting of the 11th of December, 1903, evidence at pages 1401 and 1402 - there was a board meeting

"The President then reported that he had received a letter from Mr. Greenham, enclosing a memorandum from the directors of the Montreal Cotton Company which he handed to secretary to read to the Board."

read to the Board.

The memorandum which gave an account of the financial position of the Merchants Cotton Company...."

Your Lordship will remember that here we are dealing with the Board of the Dominion Cotton Mills all the time. This is a memo from one of their competitors.

"....also contained a proposition from their directors for sale of the net assets of the company to the Dominion Cotton Mills Co. Limited for the sum of One Million five hundred thousand dollars ($1,500,000) payable as follows: Five hundred thousand dollars $500,000) cash and the balance One million dollars ($1,000,000), in 6 per cent. bonds secured on the St. Henri property and plants of their company. The Dominion Cotton Mills Company to assume payment of the floating liabilities and existing bonds of their company.

The President then put the proposal before the Board and was advised to reply to Mr. Crathern stating that owing to conditions existing in cotton trade at present time our directors cannot see their way to accept the offer."

In the same meeting there is a reference:

" The President related to the Board an interview he had had with Mr. Holt, with view of taking over the Colonial Bleaching and Printing Company. He stated that Mr. Mole had visited

the works and that Mr. Mole and the Secretary had a meeting with Messrs Whitehead and Shannon and had obtained figures of their standing, which were read to the Board."

Mole was the new manager of the Dominion Cottons, I am instructed:

"The President also stated that at a further interview with Mr. Holt, on proposing to take over their company at figures to be determined by valuation, that Mr. Holt's idea was to sell company as a going concern and mentioned $250 a share as a figure that their stock should be purchased for. As this was considered out of the question the matter was dropped for the present."

So there we find another attempt - two more attempts.

THE COMMISSIONER: What was the date of that?

MR. HEWARD: That is December 11th, 1903.

THE COMMISSIONER: And Mr. Holt then thought the stock was worth $250.

MR. McRUER: That is Colonial Bleaching.

THE COMMISSIONER: The stock was acquired at $166.50.

MR. HEWARD: Yes, my lord. Now, at the annual meeting of April 1904, evidence page 5764, they report a decrease in the floating liabilities and state that it was principally caused by decrease

in manufactured stock but no dividends were paid.

The reference to the decrease in the floating liabilities reads as follows:

"Your Directors are pleased to state that since the last annual statement was presented to the shareholders the company has produced its floating liabilities nearly $800,000 principally caused by the large decrease in our manufactured stocks."

There was no dividend paid.

Then we come finally to the Board Meeting of the 14th December, 1904 at pages 5764-a. In any event all I wanted to call attention to in that was that there the directors returned the offer which had been sent to be transmitted to the shareholders from the Royal Trust.

THE COMMISSIONER: What was the amount offered for the shares, Dominion Cottons?

MR. HEWARD: I will give you that in just a minute.

THE COMMISSIONER: It is set out here some place?

MR. HEWARD: Yes, it is set out in Exhibit 329, which contains schedule No. 2 on page 7. The shareholders of the Dominion Cotton Mills Company Limited were offered for their capital stock a percent of the face value of the securities of the new company consisting of half of that, 50% in new preferred stock and ---

THE COMMISSIONER: Just the value I want to get

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manufactured stock but no dividends were paid.

The reference to the decrease in the floating liabilities reads as follows:

"The directors are pleased to state that since the last annual statement was presented to the shareholders the company has proceeded its operations satisfactorily overall, and profitably, based by the last annual statement is most satisfactory."

There was no dividend paid.

Then we come finally to the report covering the last December, 1924 or years 1924-5. In my opinion all I needed to recall attention to in that was that since the directors returned the offer which had been sent to be presented to the shareholders from the royal street.

THE COMMISSIONER: Just was the amount offered for the shares, Dominion Cotton?

MR. BURGIN: I will give you that in just a minute.

THE COMMISSIONER: It is set out here some place?

MR. BURGIN: Yes, it is set out in Exhibit 22A, which contains schedule No. 2 on page 7. The shareholders of the Dominion Cotton Mills Company included were offered for their capital stock a percentage of the face value of the securities of the new company consisting of, half of them, the preferred stock and ---

THE COMMISSIONER: Just the value I want to get

at. It was 50% of its face value?

MR. HEWARD: Yes, 50% of its face value, half in preferred and half in new bonds.

Now my lord, I submit, returning to my factum now that:

"Under the circumstances it is not astonishing that the shareholders of the four old companies were willing to part with their shares to the Syndicate at a sacrifice."

That the shareholders of the four old companies were willing to part with their shares to the Syndicate at a figure which represented less than the net value of the tangible assets of those four companies taken in combination on the books of those four companies.

But I also submit that this does not mean that the new company paid too much for the assets which it received from the Syndicate. My submission is this, your lordship, that the old companies were in a demoralized state with a great shortage of working capital but that their properties had a great potential value, as later turned out, very soon afterwards, they had on their books.

THE COMMISSIONER: Provided they were allowed to operate under certain conditions which did not then exist and it required a change of management, reduction of overhead, the elimination of a great deal of competition. All those things had to occur before these properties could go on and prosper. At the

Q. At [illegible] its face value?

MR. HOWARD: Yes, 50% of its face value, half in preferred and half in new bonds.

Now my lord, I submit, returning to my Factum now that:

"Under the circumstances it is not astonishing that the shareholders of the four old companies were willing to part with their shares to the syndicate at a sacrifice."

That the shareholders of the four old companies were willing to part with their shares to the syndicate at a figure which represented less than the net value of the tangible assets of these four companies taken in combination on the books of those four companies.

But I also submit that this does not mean that the new company paid too much for the assets which it received from the syndicate. My submission is this, your lordship, that the old companies were in a demoralized state with a great shortage of working capital but that their properties had a great potential value, [illegible], they had no [illegible].

THE COMMISSIONER: Provided they were allowed to operate under certain conditions which [illegible] exist and it required a change of management, reduction of overhead, the elimination of a great deal of [illegible]. All these things had to [illegible] before [illegible].

time those shares were bought the market value of those shares must have been ---

MR. HEWARD: Must have been low on account of those conditions.

THE COMMISSIONER: Certainly, when you are valuing shares that is the way you value them. In all four of these cases were these shares listed on the stock exchange?

MR. HEWARD: The Dominion Cotton Mills were; I don't know about the others. I submit that the value of the new company was well worth the securities which they issued for them to the Syndicate. The Syndicate was a buyer and a seller.

THE COMMISSIONER: Yes, you have in mind now only the assets, the physical assets, and what you have been calling goodwill?

MR. HEWARD: Yes. I am instructed ---

THE COMMISSIONER: When you say the actual shares themselves were worth more than was paid for them, you are getting into a different realm there.

MR. HEWARD: No, I say the assets over which they acquired control through practically 100% ownership in two cases and over 75% ownership in the other two cases, that those physical assets were worth to the new company what they paid for them in securities, particularly when they knew the company had its liquid position put in good standing by the same people who sold them the shares. And my submission is

time those shares were bought the market value of those shares must have been ---

MR. HEARD: Must have been low on account of those conditions.

THE COMMISSIONER: Certainly, when you are valuing shares that is the way you value them. In all four of those cases were those shares listed on the stock exchange?

MR. HEARD: The Dominion Cotton Mills were; I don't know about the others. I assume that the value of the new company was well worth the consideration they issued for them to the syndicate. The syndicate was a buyer and a seller.

THE COMMISSIONER: Yes, you are in mind now only the assets, the physical assets, and that you have been quite reasonable?

MR. HEARD: Yes. I am instructed ---

THE COMMISSIONER: When you say the actual shares themselves were worth more than was paid for them, you are getting into a different realm there.

MR. HEARD: No, I say the use to which they acquired control through practically 100% ownership in two cases and over 70% ownership in the other two cases, that those physical assets were worth to the new company what they paid for them in securities, particularly when they knew the company had its liquid position put in good standing by the same [illegible] [illegible] that the [illegible].

that the return which the new Company earned immediately afterwards indicates that the tangible asset at least had a value equal to that which was shown on the books of the old Company and that the intangible assets at least had a value equal to the balance of the common stock. I submit, my lord, that for the purpose of this inquiry what the syndicate paid the old shareholders for their shares is quite immaterial.

THE COMMISSIONER: So long as you do not start to bring in and put a value on the shares themselves as shares it may be immaterial. If you dealt with physical assets you are on different ground.

MR. HEWARD: If you picked up a few of the shares in the market they probably would not have this value, but when you pick up all the shares with a view to combining them and remember, your Lordship, the minute these got into the hands of the Syndicate the control was combined in one entity - then I say that the Syndicate having acquired all that control of the companies sold something very valuable to the new company and did not get overpaid for it by taking stock.

THE COMMISSIONER: By acquiring all the shares they acquired all the assets.

MR. HEWARD: I do not pretend that they acquired all the assets---

THE COMMISSIONER: I know but by acquiring all the shares they would have acquired all the assets.

that the return which the new company earned immediately afterwards indicates that the tangible assets at least had a value equal to that which was shown on the book of the old company and that the intangible assets at least had a value equal to the balance of the common stock. I submit, my lord, that for the purpose of this inquiry what the vendors paid the old shareholders for their shares is quite immaterial.

MR. COURT KERR: So long as you do not start to bring in and put a value on the shares themselves as shares it may be immaterial. If you deal with physical assets you are on different ground.

MR. [illegible]: If you showed us a few of the shares in the market they probably would not have [illegible] but when you join up all the shares with a view to amalgamating them and remember, your lordship, my clients have put into the hands of the syndicate the control was combined in one entity - then I say that the syndicate having acquired all that control of the companies sold something very valuable to the new company and did not get overpaid for it by taking shares.

THE COMMISSIONER: By acquiring all the shares they acquired all the assets.

MR. [illegible]: I do not contend that they acquired all the assets---

[illegible]

where theyacquired 96% of the sahres they acquired 96% of the assets.

MR. HEWARD: And a complete voting control.

THE COMMISSIONER: Yes. I see your point allright.

MR. HEWARD: Now, as I said, I do not think that what the Syndicate paid for their shares is material to this inquiry, but in justice to the Syndicate - I do not hold any brief for them because a large majority of them are not in a position to retain counsel, but ---

THE COMMISSIONER: They got beyond that.

MR. HEWARD: What they did was they come along--

MR. McRUER: There may be counsel there but none of us at the present time.

MR. HEWARD: They are not in communication in spite of Sir Conan Doyle not being in communication with any of us.

The Syndicate came along with new capital which they were willing to risk and with this new capital they backed their judgment that the assets of the new Company when properly integrated or coordinated could be successfully and economically administered, and in so backing their judgment I submit they took risks in view of the history of the old Companies, and how great those risks were can be seen by surveying the extensive liabilities which ranked ahead of the common stock in which the Syndicate placed part of the new money subscribed by them. When the merger was

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consummated in 1905 these prior liabilities amounted to $13,367,161.38. They consisted - I do not intend to go through them in detail.

THE COMMISSIONER: Please repeat that figure?

MR. HEWARD: The prior liabilities on the consummation of the merger or acquiring of control and the issue of the new securities of the new company, in addition to the existing bonds of the old companies which were left outstanding and bank loans, &c., these prior liabilities amounted to $13,367,161.38. I won't go into all the details of that, your lordship, although I could give you a list of them. If you would like to have them read into the record.

THE COMMISSIONER: You may as well a while you are at it.

MR. HEWARD: The underlying bonds of the old Companies consisted of the following: Dominion Cotton Mills Limited, Stirling Bonds, $1,125,660. Dominion --

MR.McRUER: They are all in this Exhibit 529, in that Schedule you mentioned.

MR. HEWARD: No, not these, because there are some other liabilities which are shown on the books of the old companies. Dominion Cotton Mills, Currency debentures, $2,229,000. Merchants Cotton Company Limited, $162,000. Montmorency, $450,000. Colonial Bleaching and Printing Company, Bonds, $47,000. So we have underlying bonds then of a total of $4,013,660. Then we have the bank and

commencing in 1926 some prior liabilities amounted to $12,367,181.38. They consisted - I do not intend to go through them in detail.

THE COMMISSIONER: Please repeat that figure?

MR. HEYARD: The prior liabilities on the consummation of the merger or acquiring of control are the issue of the new securities of the new company, in addition to the existing bonds of the old companies which were left outstanding and bank loans, &c., these prior liabilities amounted to $12,367,181.38. I won't go into all the details of that, your Lordship, although I could give you a list of them. If you would like to have them read into the record.

THE COMMISSIONER: You may as well - while you are at it.

MR. HEYARD: The underlying bonds of the old companies consisted of the following: Dominion Cotton Mills Limited, sinking fund, $1,125,000. Dominion -

MR. [illegible]: They are all in this amount but that concerns you mentioned.

MR. HEYARD: No, not those, because there are some other liabilities which are shown on the books of the old companies. Dominion Cotton Mills, [illegible] $47,000. So we have underlying bonds then of a total of $4,012,860. Then we have the bank and

other loans of the constituent companies, the old companies. The Dominion Cotton Mills Company Limited had bank and other loans of $1,438,486.14. The Merchants Cotton Company Limited, $1,180,759.66. The Montmorency Cotton Mills Company, $537,144.63. The Colonial Bleaching and Printing Company $424,488.36. So that the banking and other loans of the constituent companies, amounted to $3,580,878.79. Then there were other liabilities of the constituent companies including open accounts and bills payable, Etc. amounting in all to $965,214.26. Then we get the bonds of the new Company, Dominion Textile Company Limited, bonds, series A, B, C, and D, which were given in exchange for the capital stock of the Constituent companies, $2,953,008.33. Then we have preferred stock of Dominion Textile Company of the new Company, 13,554 shares given in exchange for the capital stock of the constituent companies, that is 1,354,500 shares subscribed for at par by the Syndicate, 500,000. The total preferred stock of the new Company was 1,854,400. So that there was total liabilities ranking ahead of the common, as I have said, of $13,367,161.38, and total liabilities ranking ahead of both preferred and common - I am mentioning that because the Syndicate took part of their holdings in preferred which they paid for at par - total liabilities ranking ahead of both preferred and common stock was $11,512,761.38.

other loans of the constituent companies, the old companies. The Dominion Textile Company Limited had bank and other loans of $1,490,406.14. The Saccharine Cotton Company Limited, $1,180,720.06. The Montmorency Cotton Mills Company, $287,1.4.56. The Colonial Bleaching and Printing Company $468,68.56. So that the banking and other loans of the constituent companies, amounted to $3,380,204.70. Then there were other liabilities of the constituent companies including open accounts and bills payable, etc. amounting in all to $385,814.56. Then we got the bonds of the new company, Dominion Textile Company Limited, 5 per, series A, B, C, and D, which were given in exchange for the original stock of the constituent companies, $4,928,000.00. Then we have preferred stock of Dominion Textile Company of the new company, 18,884 shares given in exchange for the original stock of the constituent companies, that is 1,884,000 shares subscribed for at par by the syndicate, 000,000. The total preferred stock of the new Company was 1,884,000. So that there was total liabilities ranking ahead of the common, as I have said, of $16,307,181.56, and total liabilities ranking ahead of both preferred and common - I am mentioning that because the syndicate took part of their subscriptions in preferred which they paid for at par - total liabilities ranking ahead of both preferred and common stock was $21,812,781.56.

Now, I submit, therefore, that in view of the risk which the Syndicate were willing to take the Syndicate should not be criticized for having paid for the shares of the old companies less than they proved to be worth in the hands of the new company. They were going in, putting up their own money, taking these risks and rendering these services and they were entitled to make a profit for the risk and for these services. It must be remembered from the point of view of the industry as a whole that by taking these risks they probably saved the undertaking from bankruptcy and preserved this part of the industry for Canada. However, as I have said, my lord, the question of what the Syndicate paid for the shares of the old companies seems to me to be immaterial for the purpose of this inquiry, but what is material for the purpose of determining the amount of the capital invested in the Dominion TextilesLimited at the outset is the value of the assets which lay behind the shares which the Company has received and, as I said, the return on the assets which it received indicates that the assets, tangible and intangible, when properly coordinated had a value to the Company at least equal to the par value of the securities which it issued to acquire them.

-- The Commission adjourned at 4.30 P.M. to resume Thursday, March 4th, 1937, at 10.30 A.M.

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Now, I submit, therefore, that in view of the fact which the syndicate were willing to take the syndicate should not be criticized for having paid for the shares of the old companies less than they proved to be worth in the hands of the new company. They were going in, putting up their own money, taking more risks and incurring more expenses than they were entitled to make a profit for the risk and for their services. It must be remembered from the point of view of the industry as a whole that by taking these risks they probably saved the underwriting from bankruptcy and preserved this part of the industry for Canada. However, as I have said, my idea, the question of what the syndicate paid for the shares of the old companies seems to me to be immaterial for the purpose of this inquiry, but that is material for the purpose of determining the amount of the capital invested in the Dominion Textile and at any account is the value of the shares which lay behind the shares which the company has received and, as I said, the return on the shares which is received indicates that the shares, tangible and intangible, when properly coordinated had a value to the Company at least equal to the par value of the securities which it issued in exchange.

The commission adjourned at 4.30 p.m. to Thursday, March 4th, 1937, at 10.30 a.m.

ROYAL COMMISSION ON THE TEXTILE INDUSTRY

HON. MR. JUSTICE W.F.A. TURGEON,

Commissioner,

A.S. Whiteley, Secretary,

ONE HUNDRED AND TWENTY-THIRD DAY

(March 4th, 1937)

A R G U M E N T

Robert Brydie,
Official Reporter.

ROYAL COMMISSION ON THE TEXTILE INDUSTRY

HON. MR. JUSTICE W.F.A. TURGEON,

Commissioner,

A.S. Whiteley, Secretary,

Appearances:

J.C. McRuer, K.C. and E. Beauregard, K.C.	Commission Counsel,
R.L. Kellock, K.C.	For Primary Textile Institute.
C.G. Heward, K.C. Aime Geoffrion, K.C. and C.T. Ballantyne,	For Dominion Textile Company,
S.G. Dixon, K.C.	For Courtaulds Limited,
L.A. Forsyth, K.C.	For Canadian Celanese Ltd. and Canadian Silk Products Limited.
Thos. Tremblay, K.C. and J. H. Hebert,	For M.E. Binz Co. Ltd.
Francois Lajoie, K.C.	For Wabasso Cotton Co.

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Ottawa, Ontario,
Thursday, March 4, 1937.

-- The Commission resumed at 10.30 A.M.

ARGUMENT BY MR. HEWARD, K.C., (Resumed)

MR. HEWARD: May it please your Commission, I have now obtained the reference in the privy council case of Amyot and others for which your lordship asked yesterday.

THE COMMISSIONER: Where is this in the brief ?

MR. HEWARD: I do not think I referred to it, my lord, in the brief.

THE COMMISSIONER: What is the case ?

MR. HEWARD: Amyot and Dominion Cotton Mills Company.

THE COMMISSIONER: A case against Canadian Cottons ?

MR. HEWARD: Dominion Cottons. In the privy council records it reads the other way -- Dominion Cotton Mills Limited and others, and Amyot and others, and the report is to be found in Law Reports, 1912, Appeal Cases, page 546. I have located for your lordship what appears to be an office copy of the judgment and I shall be glad to hand it to your lordship. It is rather interesting to note that the privy council there refers to the same conditions in regard to Dominion Cotton Company which I referred to in my argument yesterday, about having

[illegible], August 9,
Wednesday, March 4, 1925.

-- The Commission resumed at 10.30 A.M.

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[illegible]

MR. HAYDEN: May it please your Commission, I have now obtained the references in the privy council case of Asgot and others for which your lordship asked yesterday.

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MR. [illegible]: Where is this [illegible] ?

MR. H[illegible]: I do not think I referred to it, my lord, in the brief.

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MR. [illegible]: What is the case ?

MR. H[illegible]: Asgot and Dominion Cotton Mills Company.

MR. [illegible]: [illegible] Dominion Cottons ?

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MR. HAYDEN: Dominion Cottons. In the privy council reports it reads the old way -- Dominion Cotton Mills Limited and others, and Asgot and others, and the report is to be found in Law Reports, 1915, Appeal Cases, page 546. I have looked for your lordship what appears to be an office copy of the judgment and I shall be glad to hand it to your lordship. It is rather interesting to note that the privy council there refers to the same conditions in regard to Dominion Cotton Company which I referred to in my argument yesterday, about having

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bought large physical assets and intending to float loans.

Turning to my brief, my lord, I was midway in the financial history of the company. Iwas at page 10. Your lordship will remember I had argued that behind the common stock, in addition to the $500,000 which the syndicate had paid in, there were tangible assets and also intangible assets.

I also referred to Exhibit 1232, which was the statement prepared by Mr. Glassco in regard to invested capital and earnings thereon from 1905 to 1936. I pointed out that throughout that statement there has been eliminated from invested capital any capital now represented by tangible assets. In other words, we have not included the $2,500,000 of the common stock which we say was issued in consideration of intangibles.

Now, my lord, to deal further with the history of the company, the next step in its financial history is 1920, when a very full and completely detailed appraisal occupying four to five months according to the evidence of Mr. Frick was made.

THE COMMISSIONER: There is one thing I would question there, next to the last paragraph on that page. You say:

"In addition, the new company received valuable intangible consideration, which events have shown to be at least worth the difference between the book values of the

tangible assets received and the total par value of the securities issued by the new company in consideration therefor."

MR. HEWARD: Yes.

THE COMMISSIONER: Now then, the question is this. You say that these intangible assets -- you know what they are; you have already referred to them -- they are sometimes called good will but they are analyzed into various other things, such as doing away with competition, better management, reduction of overhead, and so on --

MR. HEWARD: And service.

THE COMMISSIONER: And service. It looks to me as if the real gap there is not between the book value of the tangible assets and the value you get after applying all these intangible assets to that, but it is between the actual value of the assets in the first place, which I think would be more closely reflected in what the syndicate paid for them -- do you see what I mean ? Here are your tangible assets. They are there, but in certain circumstances t ose tangible assets might be worth hardly any more than scrap value. That is true, is it not, in the case of any given company ? The tangible assets themselves have more or less value according to whether the company can operate successfully. Now the syndicate bought these physical assets at a time when the outlook did not look any too good for them just

as you have told us.

MR. HEWARD: For the constituent companies.

THE COMMISSIONER: And that must have depreciated the intrinsic value of the physical assets, of the plant, machinery and so on. So it seems to me that a fairer comparison to make is between the actual value of each of these plants as it stood, with its prospects as they were then of making money, and the new value which the whole thing got after the merger and when all these other intangible factors came in to give the assets value -- and not some particular book value at the time of the consolidation.

MR. HEWARD: It was not written in at the time of the consolidation. It was existing on the books of the constituent companies.

THE COMMISSIONER: Even so, they might appraise their plant at so much, and yet nobody would give them that much for it just the same.

MR. HEWARD: The point is this; they were in a distressed position --

THE COMMISSIONER: Precisely, and I say that in this distressed position, each one of these plants would depreciate the selling value of that plant.

MR. HEWARD: That is correct in regard to a particular constituent company.

THE COMMISSIONER: Yes, of course.

MR. HEWARD: But not if that company had been

as you have told us.

Mr. [illegible]: The [illegible] [illegible]

The CHAIRMAN: And that must have depreciated the intrinsic value of the physical assets, of the plant, machinery and so on. So it seems to me that a fairly considerable loss is between the actual value of each of those plants as it stood, with its resources as they were then of making money, and the new value which the whole thing got after the merger and when all these [illegible] factors came in to give the assets value -- and not some particular book value at the time of the [illegible].

Mr. [illegible]: It was not written in at one time of the amalgamation. It was existing on the books of the constituent companies.

[illegible] Mr. [illegible] [illegible] their plant at so much, and yet nobody would give them that much for it just the same.

Mr. [illegible]: The point is this: they were in a distressed position --

The CHAIRMAN: Precisely, and I say that in this distressed position, each one of these plants would depreciate the selling value of that plant.

Mr. [illegible]: That is correct in regard to a particular constituent company.

The [illegible]: Yes, of course.

Mr. [illegible]: But not if that company had been

in a better position, and what I think we have to look at from the point of view of the Dominion Textile Company, the ultimate acquirers, is what were those assets worth to the Dominion Textile Company. In other words --

THE COMMISSIONER: They only had their full value to the Dominion Textile Company after the merger and after these other things were done which you call intangibles.

MR. HEWARD: I submit that once the syndicate had got together these controlling shares in the syndicate's hands, once they had them together in the hands of the syndicate, then they acquired a value which was greater than what the syndicate had paid for them separately. They combined them and gave them this greater value in the hands of the syndicate.

THE COMMISSIONER: The book values you refer to here are the book values of each one of these companies on its own books. Now while they had certain book values on their books, nevertheless they had to sell out at less than these book values.

MR. HEWARD: They did.

THE COMMISSIONER: Of course.

MR. HEWARD: Because they were selling independently.

THE COMMISSIONER: Exactly. That is what I say, and I think therefore the two extremities of this case are not those book values but what the actual values of these plants were, which I can only judge

by the amount they sold them for and the accretion, that is the increased value, which the whole concern received after these intangible assets were brought into play. That is the way I am looking at it at present, but of course I may be wrong.

MR. HEWARD: I would like to submit this feature to your lordship. Supposing the syndicate had bought a plant or a machine, let us say they had bought a set of machinery and that one part was missing from that set of machinery, but the machinery was worth so much; and then it bought that machinery from A, and then from B, the only one perhaps from which they could get it; they bought that missing part from B, and then when they put these two together in the hands of the syndicate it had a greater value than when they were bought separately. That is, they picked them out, bought them and put them together, and then it had a greater value.

THE COMMISSIONER: I think you are going back on the same thing. There is no analogy there. It is the same thing over again. They bought the assets of this company, and they bought the assets of that company, and they bought the assets of the other company, and they did not buy those assets on the book values which these respective companies had, but on their actual cash value. Then they bring them all together and throw in these intangibles, and then they have a very prosperous concern. It seems to me that the two extremities, as

by the amount they sold them for and the question, that is the increased value, which the whole concern received after these intangible assets were brought into play. That is the way I am looking at it at present, but of course I may be crazy.

Mr. [illegible] I would like to submit this feature to your lordship. Supposing the syndicate had bought a plant or a machine, let us say they had bought a set of machinery and that one part was missing from that set of machinery, but the machinery was worth so much; and then it bought that same thing from A, and then from B, the only one perhaps from which they could get it; they bought that missing part from B, and then when they put those two together in the hands of the syndicate it had a greater value than when they were bought separately. That is, they picked them out, bought them and put them together, and then it had a greater value.

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I say, are the actual values paid on the one hand, and the new value which the whole corporation got when it started to work.

MR. McRUER: There were seven mills closed.

THE COMMISSIONER: Seven mills were closed.

MR. HEWARD: I am going to deal with that later, my lord.

THE COMMISSIONER: But that came later.

MR. HEWARD: That was over a long period. I am going to deal with these closings later. That is another matter. It took place over a long period of years.

THE COMMISSIONER: Yes, we can deal with that later.

MR. HEWARD: What I want to point out is that once the four blocks of shares were in the hands of the syndicate the merger was a fait accompli.

THE COMMISSIONER: Yes.

MR. HEWARD: They got that value, and I say that we can say they were at least worth the book values of the constituent companies.

THE COMMISSIONER: Yes, but Mr. Heward we are not in the position where we are in want of a better value. We have another value in the actual selling price.

MR. HEWARD: In the selling price ?

THE COMMISSIONER: Yes, in the price that the syndicate paid.

MR. HEWARD: That the syndicate paid or that the syndicate received ?

THE COMMISSIONER: No. In buying out these four companies, one company got so much, one got $166 per

I say, are the actual values paid on the one hand, and the new value which the whole corporation got when it started to work.

MR. MORGAN: There were seven mills closed.

THE COMMISSIONER: Seven mills were closed.

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THE COMMISSIONER: But that came later.

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THE COMMISSIONER: Yes, [illegible]

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THE COMMISSIONER: Yes.

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THE COMMISSIONER: Yes, but Mr. Haward we are not in the position where we are in want of a better value. We have another value in the actual selling price.

MR. HAWARD: In the selling price ?

THE COMMISSIONER: Yes, in the price that the syndicate paid.

MR. HAWARD: That the syndicate paid or that the syndicate received ?

THE COMMISSIONER: No. In buying out these four companies, one company got so much, one got $165 per

share, another company got $50 per share, another company got so much. The aggregate of all these shares would be the value of the company.

MR. HEWARD: Yes, my ø lord, but that I submit is because they were able to buy from distressed shareholders, and the distress of the shareholders was not due to the fact that the intrinsic value of their machinery was less than shown on the books --

THE COMMISSIONER: But you cannot talk about intrinsic value alone. It is like so many cases we have had. Take insurance cases. Take a hotel, for instance. Hotels in various provinces have great intrinsic values, in the brick, mortar and steel in the building, but if the province goes dry, try and sell the hotel!

MR. HEWARD: The point I am trying to make, my lord, is that the company received something other than and much greater than the $500,000 from the syndicate. They received something which had in the condition in which they received it -- that is to say, when the merger was a fait accompli they had received something which had an earning power which justified the values which were given to them. It is true perhaps that the shareholders could not expect to get the book values because they were dealing independently with the syndicate. Each company was dealing independently with the syndicate, and they were in distress, not because their machinery and plant was run down or anything of that kind,

[illegible] [illegible] [illegible] [

because it was just the opposite; it was because they had put a lot of money into machinery and plant and they were in distress because they had run themselves short of working cash, of liquid assets. Therefore I think it is a fair assumption that they sold these assets at less than they would have sold them if they had not been short of working capital. The lack of working capital was the grave difficulty that was in the path of each of these four companies.

THE COMMISSIONER: That is one of the difficulties. Another was that they were competing with each other.

MR. HEWARD: Another was the condition of the industry which perhaps had brought about that lack of working capital -- that, and poor management.

THE COMMISSIONER: Poor management.

MR. HEWARD: Yes.

MR. McRUER: What my friend says is not quite consistent with the judgment of the privy council. That is shown on Exhibit 329, as follows:

> "The evidence seems to show that the valuation which the directors of the Cotton company placed on the assets of that company at the time when the syndicate made their offer was a fair and liberal valuation, that the Cotton company was then going from bad to worse, and there was no reasonable prospect of any revival of prosperity, and what is still more important, that the terms of the lease were intended to be fair and are fair."

because it was just the opposite. It was because they had put a lot of money into machinery and plant and they were in distress because they had run themselves short of working capital, of liquid assets. Therefore I think it is a fair assumption that they sold these assets at less than they would have sold them if they had not been short of working capital. The loss of working capital was the prime difficulty that was in the path of each of these four companies.

THE COMMISSIONER: That is one of the difficulties. Another was that they were competing with each other.

MR. MCLEAN: Another was the condition of the industry which perhaps had brought about that lack of working capital -- that, and poor management.

THE COMMISSIONER: Your witness.

MR. MCLEAN: Yes.

MR. MCLEAN: That my friend says is not quite consistent with the judgment of the privy council. That is shown on Exhibit 220, as follows:

> "The evidence seems to show that the valuation which the directors of the Cotton company placed on the assets of that company at the time when the syndicate made their offer was a fair and liberal valuation, that the Cotton company was then going from bad to worse, and there was no reasonable prospect of any revival of prosperity, and what is still more important, that the terms of the lease were intended to be fair and are fair."

THE COMMISSIONER: That is about what I was saying.

MR. HEWARD: I think the question there is, was it a fair price to give to the constituent shareholders in the circumstances of distress in which they found themselves. I think that is what the privy council meant there. I submit that that is the case. That was, of course, the Dominion Cotton mill only that that decision referred to.

THE COMMISSIONER: They got what in that case? Fifty per cent, was it not ?

MR. HEWARD: Fifty per cent, yes.

MR. McRUER: Those assets formed the large bulk of the assets that were taken over by the syndicate.

MR. HEWARD: Yes, it was the largest company. So my submission there, my lord, is that while the price which the constituent shareholders got may have been all that they were entitled to receive under the circumstances, that once the syndicate --

THE COMMISSIONER: That is another way of saying the actual value.

MR. HEWARD: No, I would not think so.

THE COMMISSIONER: They were entitled to receive the best price they could get.

MR. HEWARD: They could get.

THE COMMISSIONER: They could get, that each company could get.

MR. HEWARD: The best price that each company could get under the circumstances in which each

THE COMMISSIONER: That is about what I was saying.

MR. [illegible]: I think the question there is, was [illegible] modern in the circumstances of distress in which they found themselves. I think that is what the privy council meant there. I submit that that is the case. That was, of course, the Dominion Cotton Mill only [illegible].

THE COMMISSIONER: They got what in that case? Fifty per cent, was it not?

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MR. [illegible]: Those assets formed the large bulk of the assets that were taken over by the syndicate.

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So my submission there, my lord, is that while the price which the constituent shareholders got may have been all that they were entitled to receive under the circumstances, that once the syndicate --

THE COMMISSIONER: That is another way of saying the actual value.

MR. [illegible]: No, I would not think so.

THE COMMISSIONER: They were entitled to receive the best price they could get.

MR. [illegible]: They could get.

THE COMMISSIONER: [illegible]

[illegible]

MR. [illegible]: [illegible]

company operating independently found itself. What I mean is this, my lord, they found on account of their financial condition and their lack of liquid capital that they were getting into difficulties in operating.

THE COMMISSIONER: We need not go over that again. I understand that.

MR. HEWARD: No. So what was received by any distressed shareholder from the syndicate may be all that he could get for it in his position, but it does not mean that the value of the assets in relation to their earning power, when properly brought together, was not perhaps even greater than the book value on the books of the old companies. We have taken the book value on the books of the old companies for lack of any better indication, and we have said: We will eliminate everything else as being intangibles.

Then, of course, my lord, there is this to be said. Of course, there are a great many uses of the word "value", but it seems to me that when we use the word "value" here, what we really must look to is what would be the replacement value.

THE COMMISSIONER: Oh, that is a very different thing.

MR. HEWARD: What would be the replacement value of those assets. Suppose the Dominion Textile Company --

THE COMMISSIONER: Are you talking of the assets of the company now ?

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I mean is this, my lord, they found on account of their financial condition and their lack of funds coupled that they were getting into difficulties in operation.

The COMMISSIONER: We need not go over that again. I understand that.

Mr. [illegible]: No. So much was received by way discovered encumbrances from the creditors may be all that he could get for it in his position, but it does not mean that the value of the assets in relation to their creditor power, when compared by brought together, was not perhaps even greater than the book value on the books of the old companies. We have used the book value on the books of the old companies for lack of any better [illegible], but we have said: we will eliminate everything else as being lacking there.

Then, of course, my lord, there is this to be said. Of course, there are a great many uses of the word "value" but it seems to me that when we use the word "value" here, what we really mean look to is what would be the replacement value.

The COMMISSIONER: Oh, that is a very different [illegible].

Mr. [illegible]: What would be the replacement value of such assets. Suppose we consider [illegible] —

The COMMISSIONER: Are you talking of the assets of the company now?

MR. HEWARD: No, not now but when it acquired those assets.

THE COMMISSIONER: You cannot put a replacement value on that. The example I gave you a few minutes ago of a hotel is right there. You remember that case in the supreme court of a hotel. You have it exactly there. They said, "Oh well, it will cost us $20,000 to rebuild this hotel," and they were asked "How much could you sell it for?" And they said $4,000.

MR. HEWARD: Supposing these constituent companies were entirely out of the way as they were gotten out of the way by this move. Suppose they did not exist, what could the Dominion Textile Company Limited have built an equivalent property for, a similar property for, if it wanted to carry on with these four out of the way, which was accomplished ? What could it have built such a property for and carried on business ?

THE COMMISSIONER: You mean if these properties had not existed at all ?

MR. HEWARD: Yes.

THE COMMISSIONER: If the field had been empty?

MR. HEWARD: The syndicate emptied the field of these four companies and got their assets. We will take that for granted although, of course, they only got 90 and 96 per cent, and that sort of thing.

THE COMMISSIONER: I think what you are doing is this. You are taking those assets after adding

MR. EBBS-WD: No, not now but when it acquired those assets.

THE COMMISSIONER: You cannot put a valuation value on that. The example I gave you a few minutes ago of a hotel is right there. You remember that case in the supreme court of a hotel. You have it exactly there. They said, "Oh well, it will cost us $50,000 to rebuild this hotel," and they were asked "how much would you sell it for?" and they said $4,000.

MR. [illegible] These assets were entirely out of the way as they were gotten out of the way by this move. Suppose they did not exist, what could the Dominion Textile Company Limited have built as equivalent property for, a similar property for, if it wanted to carry on with these four out of the way, which was accomplished? What would it have built such a property for and as equated on business?

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MR. [illegible] Yes.

THE COMMISSIONER: If the field had been empty?

MR. EBBS-WD: The syndicate emptied the field of these four companies and got their assets. We will take that for granted although, of course, they only got 90 and 96 per cent, and that sort of thing.

THE COMMISSIONER: I think what you are doing is [illegible]. You are taking those assets after adding

the intangible elements to them, and then you are saying they are worth so much. But you cannot do both. You cannot say the intangibles are worth $2,500,000 and then have the other too.

MR. HEWARD: I wanted, my lord, to eliminate everything except --

THE COMMISSIONER: There is no doubt that after these companies were acquired and the competition was lessened, the management improved and the overhead reduced, and after all these other services were rendered, the whole company had a greater value than it had had before.

MR. HEWARD: Yes, my lord, but even before that took place it may have had a very much greater value even than it had say at the commencement of the merger because, as I have pointed out, the new management and reorganization takes some time for its effect to be seen. But I believe that the value increased the moment that these four properties were brought together, and when I say "increased" I mean increased over what the constituent shareholders could get for them. That took place the moment these four properties were brought together in the hands of the syndicate. In other words, they were then in a position, each one, to carry on, and go to the new company--

THE COMMISSIONER: Yes, I agree with you there

MR. HEWARD: They were in a position to go to the new company and say to them: Now here is a property; you have got the field clear to yourself except for such and such a company, other than the four consti-

the intangible elements to them, and then you are saying they are worth so much. But you cannot do both. You cannot say the intangibles are worth $2,500,000 and then have the other too.

MR. BRADY: I agreed, my lord, to eliminate them at any rate -

THE CHAIRMAN: There is no doubt that after these companies were acquired and the competition was lessened, the management improved and the weakness reduced, and after all these other services were restored, the whole company had a greater value than it had before.

MR. BRADY: Yes, my lord, but even before that took place it may have had a very much greater value even than it had at the commencement of the market because, as I have pointed out, the new management and reorganization takes some time for its effect to be seen. But I believe that the value increased the moment that these four properties were brought together, and when I say "increased" I mean increased over what the commercial amalgamation got for them. That took place the moment these four properties were brought together in the hands of the syndicate. In other words, they were then in a position, each one, to carry on, and go to the new company -

THE CHAIRMAN: Yes, I agree with you there.

MR. BRADY: They were in a position to go to the company and say to them: You have in a property, the mere use of which alone is worth [illegible] and some [illegible]

tuent companies; you have your field clear except for these various companies, and now here is a property that we will give you for so much, for one million dollars together with working capital; we will give it to you for so much. I think they would have been entitled there to ask for replacement value of that property.

THE COMMISSIONER: At that point.

MR. HEWARD: Yes, at that point. Now I am taking the book value in the absence of other evidence as representing the replacement value. We have no other evidence as to what the replacement value was.

THE COMMISSIONER: There are three distinct values having regard to time and circumstances: First, the value of each plant at the time it was purchased.

MR. HEWARD: Yes, my lord.

THE COMMISSIONER: And I am reminded that the privy council said that is all they could expect in the case of that one company -- that was the actual value. If I bought the whole four companies and had them in my hands and wanted to sell them to another party, they might have a greater value than they had previously. But that is a different thing.

MR. HEWARD: They had a greater value, and I submit it is fair to assume that that value would be its replacement value because theoretically the new company could go out and, if the field were clear, build plants of the same kind at the replacement value. So I say that in the absence of other evidence it is fair to assume that the book value shown on the books

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Mr. MERRIN: Yes, at that point. Now I am taking the book value in the absence of other evidence as representing the replacement value. We have no other evidence as to what the replacement value was.

THE COMMISSIONER: There are three distinct values having regard to time and circumstances: First, the value of each plant at the time it was purchased.

Mr. MERRIN: Yes, my Lord.

THE COMMISSIONER: And I am reminded that the City Council said that is all they could expect in the case of this one company -- that was the actual value. If I bought the whole four companies and had them in my hands and wanted to sell them to another party, they might have a greater value than they had previously. But that is a different thing.

Mr. MERRIN: They had a greater value, and I submit it is fair to assume that that value would be the replacement value because theoretically the company could go out and, if the field were clear, build plants of the same kind at the replacement value. I say that in the absence of other evidence it is fair to assume that the same value would be the

of the constituent companies was the replacement value. Have I made myself clear ?

THE COMMISSIONER: Oh yes, I understand your argument.

MR. HEWARD: Then, my lord, we come to the 1920 appraisal. As I had started to say, in 1920 they started that appraisal occupying from four to five months, according to Mr. Frick's evidence. It was an appraisal made by the Canadian Appraisal Company Limited of the ~~lands~~, land, buildings, plant and machinery of the Dominion Textile Company. That was fifteen years after its inception. This appraisal indicated that the values of these assets exceeded the values shown on the books by $10,459,536.63 That, of course, is the depreciated value at that time. Then on page 11 of my brief I say:

> "In December, 1922, a new financing was undertaken in the form of the issue of 25,000 common shares of $100 par value each, at par, or a total consideration of $2,500,000, such shares being issued to the shareholders."

That was for cash, of course:

> "This issue increased the total issue of the common stock to 75,000 shares."

That is the common stock issue of $100 par value each:

> "Shortly thereafter, a new company was formed under the same name to take over the assets of the previous company. The new company issued 225,000 shares of no par value

of the commercial connection on the valuation value. Have I made myself clear?

MR. CHAIRMAN: Oh yes, I understand your statement.

MR. MACKAY: Then, my lord, we come to the 1920 appraisal. As I had alerted to say, in 1920 they [illegible] [illegible] [illegible] [illegible] [illegible] month, according to Mr. Trick's evidence. It was an appraisal made by the Dominion Appraisal Company limited of the land, buildings plant and machinery of the Dominion Textile Company. That was [illegible] [illegible] [illegible]. The report said indicated that the values of those assets exceeded the values shown on the books by $10,000,000.00. That, of course, is the depreciated value at that time. Then on page 11 of my brief I say:

"In December, 1922, a new [illegible] was undertaken in the form of the issue of 50,000 common shares of $100 par value each, at par, or a total consideration of $5,000,000, such sums being issued to the shareholders."

That was for cash, of course:

"This issue increased the total issue of the common stock to 75,000 shares."

That is the common stock issue of $100 par value each.

"Shortly thereafter, a new company was formed under the same name to take over the assets of the predecessor company. The new company issued 100,000 issue [illegible]

common stock --"

No par value in this case. This was issued to the holders of the 75,000 common shares of the old company, these holders receiving three no par value shares in the new company in the place of each $100 par value share previously held. At the same time -- this is not mentioned in my brief and perhaps it is not very relevant to the matters now under discussion -- the new company issued its preferred share for share with the preferred shares of the old company, those shareholders receiving one new share of preferred in the place of the old preferred that they held previously. The new shares were cumulative, and the old shares were not. Continuing with my brief:

"The values of the fixed assets on the books of the new company were increased to reflect a part of the increased value of these assets indicated by the appraisal. The additional indicated values, as stated above --"

That is the depreciated cost, as I stated a few moments ago:

"were $10,459,536.63. The write-up in 1923 amounted to $7,500,000, and a previous adjustment had been made in 1917 amounting to $2,337,219.03, so that of the total additional value indicated by the appraisal the part reflected by the increase in book value was $9,837,219.03."

In other words, the company in those two write-ups did not absorb the whole of the increase in values that had been indicated by the appraisal of 1920.

Continuing:

"In 1928 a further issue of 45,000 no par value common shares was made --"

THE COMMISSIONER: Pardon me a moment. The appraisal showed an increase of $10,459,000 odd ?

Page 17530 follows

MR. HEWARD: $10,459,000.

THE COMMISSIONER: You just took $9,837,000.

MR. HEWARD: $9,837,000; it only reflected a part of the indicated increase.

THE COMMISSIONER: Well, nine-tenths of it.

MR. HEWARD: Yes, about nine-tenths.

" In 1928 a further issue of 45,000 no par value common shares was made, these being sold to the shareholders at $75.00 per share and bringing in $3,375,000.00 in cash, this money being required to assist in financing the acquisition of plants in Sherbrooke and Drummondville. This issue brought the total number of outstanding no par value common shares to 270,000 common shares, the amount presently outstanding."

THE COMMISSIONER: That is the amount presently outstanding?

MR. HEWARD: 270,000 common shares is the amount presently outstanding.

THE COMMISSIONER: I thought there was another share issue; is this the last?

MR. HEWARD: That is the last one, in 1928, my lord. So that the present situation, as I remember it, is there are now outstanding 19,406 preferred shares of a par value of $100 each and 270,000 common shares without nominal or par value.

THE COMMISSIONER: 270,000?

MR. HEWARD: 270,000. Now, my lord, that finishes the history from the financial point of view of the company's capital structure.

THE

[illegible]

MR. [illegible]: $10,400,000.

THE VICE PRESIDENT: You just took $5,287,000.

MR. [illegible]: [illegible] it was [illegible] per [illegible] authorized [illegible].

THE [illegible]: Well, rise-bodies of it.

MR. [illegible]: Yes, about nine-tenths.

[illegible] is there a [illegible] $[illegible] on which [illegible] value was [illegible], these being [illegible] the aforesaid [illegible] at $95.00 per share and [illegible] $[illegible] is made, the [illegible] be sought in finding the [illegible] in [illegible] and [illegible]. This [illegible] the total number of outstanding no par value common shares to 270,000 common shares, the [illegible] [illegible] [illegible].

MR. [illegible]: That is the amount [illegible] [illegible].

MR. [illegible]: 270,000 common shares is the [illegible] [illegible].

MR. [illegible]: I thought there was [illegible] shares issued; is this the last?

MR. [illegible]: That is the last one, in 1898, [illegible] lord. So that the present situation, as I [illegible] it, is there are now outstanding 19,406 preferred shares of a par value of $100 each and 270,000 common shares without nominal or par value.

[illegible] $[illegible]?

MR. [illegible]: 270,000. Now, my lord, that [illegible] the history from the financial point of view of [illegible] "[illegible] [illegible]".

THE COMMISSIONER: Is that the whole thing, preferred and common shares?

MR. HEWARD: That is the whole thing.

THE COMMISSIONER: No bonds?

MR. HEWARD: Oh no, there are bonds as well. At the present time there are $4,500,000 of bonds, 4½% bonds. My last information was not quite accurate, my lord, that I gave you. I said the bond issue was $4,500,000. That is the amount that was originally issued in 1935, the refunding issue made in 1935, and there have been redeemed since then $43,000 of bonds leaving $4,457,000 outstanding. That redemption, of course, is through the operation of the sinking fund called for by the trustees.

THE COMMISSIONER: I have the preferred right, 19,406?

MR. HEWARD: 19,406. That works out at $1,940,600. Then, there are 270,000 no par value common.

Now, having finished delving into that history, my lord, I would like to pass on and deal with the ration of earnings to invested capital, and by that I mean invested capital as used here, invested capital at cost. I would ask your lordship to refer to page 3 of exhibit number 1232 which is prepared by Messrs--

THE COMMISSIONER: By whom was it prepared?

MR. HEWARD: By Messrs Clarkson, Gordon, Dilworth and Nash.

THE COMMISSIONER: That is your own exhibit.

MR. HEWARD: That is one of our own exhibits, and

THE COMMISSIONER: In what the whole thing, preferred and common shares?

MR. HEWARD: That is the whole thing.

THE COMMISSIONER: No bonds?

MR. HEWARD: Oh no, there are bonds as well. At the present time there are $4,800,000 of bonds, 4½% bonds. My last information was not quite accurate, my lord, that I gave you. I said the bond issue was $4,500,000. That is the amount that was originally issued in 1928, the refunding issue made in 1930, and there have been redeemed since then $45,000 of bonds leaving $4,455,000 outstanding. That reduction, of course, is through the conversion of aluminum that called for by the debentures.

THE COMMISSIONER: I have the preferred right, I think.

MR. HEWARD: 15,606. That works out at $1,560,600. Then, there are 870,000 no par value common.

Now, having finished delving into that history, my lord, I would like to pass on and deal with the ration of earnings to invested capital, and by that I mean invested capital as used here, invested capital at cost. I would ask your lordship to refer to page 5 of exhibit number 1442 which is prepared by mesars-

THE COMMISSIONER: By whom was it prepared?

MR. HEWARD: By Messrs Clarkson, Gordon, Dilworth and Nash.

THE COMMISSIONER: That is your own exhibit.

MR. HEWARD: That is one of our own exhibits, and

Mr. Glassco testified to it. Now, page 3 is headed, as your lordship will see, "statement as to invested capital and earnings thereon as taken from the books of the company and the answers to the questionnaire and adjusted to eliminate consideration for common shares not represented by tangible assets", and page two -- the statement covers the whole of the period from 1906 to 1936, a 31 year period.

THE COMMISSIONER: How do you arrive at "common shares not represented by tangible assets"?

MR. HEWARD: Just the way I explained to you yesterday, my lord, by taking as the replacement valuem of the tangible assets which they received at the outset the values of the plant and the tangible assets of the constituent companies. That is the way it starts and then eliminating everything else. As I pointed out yesterday we take that replacement value -- at least we take for the book value as represented in the business, there being no evidence to the contrary -- the replacement value of the tangible assets which they received, which the syndicate received and in turn the new company received, and that replacement value after you put against it all prior liabilities, left lying behind the common stock of the new company $21,094,721.81, all tangible assets coming from the syndicate and the old companies and then we add to that the $500,000 in cash which was put in by the syndicate behind the common stock, and we get the amount that was put in at the outset,

[illegible] Now, page 2 is [illegible] "abandonment of to [illegible] operations thereon as taken from the books of the company and the assets by the quartermaster and adjusted to eliminate [illegible] tion for losses shown not represented by tangible assets", and page two -- the amount covers the whole of the period from 1905 to 1909, a [illegible] period.

Mr. Charles Frank: Do it you refer to "losses not represented by tangible assets"?

Mr. Kelso: Just the way I explained to you yesterday, by loss, by adding as the replacement values of the tangible assets which they received at the outset the values of the plant and the tangible assets of the [illegible] in the way it starts and then [illegible] else. As I pointed out yesterday [illegible] for [illegible] as represented in the [illegible] to the contrary - the replacement value of the tangible assets [illegible] which the [illegible] received and in turn the [illegible] received, and that replacement value after you put against it all prior liabilities, left [illegible] behind the [illegible] assets coming from the [illegible] and the old [illegible] and then we add to that the [illegible] in cash which was put in by the [illegible] behind the common [illegible]

and then, of course, we have to -- this statement, you will notice, deals with invested capital as represented by pr ferred and common shares. I am going to deal with the other invested capital as represented by bonds and preferred and common shares, and then later by bank loans and bonds and preferred and common shares. I am going to deal with those in a few moments, but taking this as the invested capital lying beind the shareholders' investment, all the shareholders, both preferred and common, we have first of all the par value of the preferred shares. Then we have the common shares, less any amount that was issued for intangible assets. Then we add to that the accumulated surplus, and we add again the reserves and we get the total invested capital. Then, in the next column on page 3 we have the earnings adjusted for fluctuation in the reserves, and then the final right hand column on page 3 gives the ration of earnings to invested capital.

THE COMMISSIONER: Yes, that is the ration of this next to the last column to the one before it.

MR. HEWARD: Yes, it is the percentage ration which the second to last column bears to the third to last column.

THE COMMISSIONER: I suppose what you call earnings there are really profits.

MR. HEWARD: Everything, whether they have been distributed or ploughed back, everything.

MR. McRUER: But does it include inventory reserves?

and then, of course, we have to -- this statement, you will notice, deals with invested capital as represented by preferred and common shares. I am going to deal with the other invested capital as represented by bonds and preferred and common shares, and then later by bank loans and bonds and preferred and common shares. I am going to deal with those in a few moments, but taking this as the invested capital being the shareholders' investment, all the shareholders, both preferred and common, we have first of all the par value of the preferred shares. Then we have the common shares, less any amount that was issued for intangible assets. Then we add to that the accumulated surplus, and we add again the reserves and we get the total invested capital. Then, in the next column on page 3 we have the earnings adjusted for fluctuation in the reserves, and then the final right hand column on page 3 gives the ratio of earnings to invested capital.

THE CHAIRMAN: Yes, that is the ratio of this next to the last column to the one before it.

MR. [illegible]: Yes, it is the percentage ratio which the second to last column bears to the third to last column.

[illegible] I assume that you will probably [illegible] there are really profits.

MR. [illegible]: Everything, whether they have been [illegible] or whether not, [illegible].

[illegible]

MR. HEWARD: The so-called secret reserve?

MR. McRUER: Yes.

MR. HEWARD: No, but it does make adjustments for fluctuations in the other reserves. I will deal with that so-called secret reserve.

THE COMMISSIONER: Has been adjusted for fluctuations in the reserves; that doesn't include any inventory reserve?

MR. HEWARD: It would include any reserve shown on the books, my lord. We don't admit, of course, my lord, that the so-called inventory reserve is an inventory reserve. But I am going to deal with that. As I understand it it does take in fluctuations in the raw cotton reserves which are shown on the books, Mr. Glassco?

MR. GLASSCO: Yes.

THE COMMISSIONER: You have a specific raw cotton reserve.

MR. HEWARD: We have a specific raw cotton reserve, and what my learned friend has referred to, and which I intend to deal with at some length later on, is the so-called secret inventory reserve, what he calls a secret inventory reserve, which consists in what he says is a reserve arising from the manner in which we have throughout valued our inventory of merchandise in process.

THE COMMISSIONER: That is, Mr. McRuer says that in addition to your raw cotton reserve, which is a specific one and recognized as such, you have also have another reserve hidden away in your inventory.

[illegible]

[illegible]

Mr. [illegible]: No, but it does take [illegible] for fluctuations in the other reserves. I will [illegible] with the so-called source reserve.

[illegible] in the reserves; [illegible] reserve?

[illegible] on the source, [illegible] Now, [illegible] the so-called [illegible] [illegible] a [illegible] the [illegible] bottom [illegible] [illegible]

[illegible]

Mr. [illegible]: [illegible]

[illegible] reserve.

[illegible] and what my learned friend [illegible] I in and to deal with at some length [illegible] a secret inventory reserve, which [illegible] no sure is [illegible] reserve arising from the manner in which we have [illegible] value our inventory of [illegible] dise in process.

[illegible] Mr. [illegible] [illegible] liability [illegible] [illegible] have [illegible] [illegible]

MR. HEWARD: He says we have.

THE COMMISSIONER: You say you have not.

MR. HEWARD: I challenge that.

THE COMMISSIONER: What other reserves had you in mind? You say "adjusted for fluctuations in reserves". What else is there.

MR. HEWARD: There is an investment reserve, a bad debt reserve --

THE COMMISSIONER: Raw cotton.

MR. HEWARD: First of all the raw cotton reserve.

THE COMMISSIONER: Investment.

MR. HEWARD: The next is investment reserve.

THE COMMISSIONER: Bad debts.

MR. HEWARD: The next is bad debt reserve. The raw cotton reserve, my lord, is the first one. Then, there is a contingent reserve. That only existed in two years, 1919 and 1920. Then, there is a reserve --

THE COMMISSIONER: It is no longer there?

MR. HEWARD: It is no longer there. That is one of the fluctuationsx I presume we have to account for. Then, there is a reserve for bad debts.

THE COMMISSIONER: That is away back in 1920.

MR. HEWARD: 1919 and 1920; there was a contingent reserve which no longer exists; is that right?

MR. GLASSCO: Yes.

MR. HEWARD: Then, there is a reserve for bad debts, and a reserve for pension fund, and then a general reserve,--

MR. [illegible]: We have no here.

THE CHAIRMAN: Go on, you have got.

MR. [illegible]: I challenge that.

MR. [illegible]: That other reserves had been [illegible] or any [illegible] for fluctuations in reserves. That's what is there.

MR. [illegible]: There is an investment reserve, a bad debt reserve --

THE CHAIRMAN: Yes, cotton.

MR. [illegible]: Most of all the raw cotton reserve.

THE CHAIRMAN: Investment.

MR. [illegible]: The real is investment reserve.

THE CHAIRMAN: Bad debts.

MR. [illegible]: The real is bad debt reserve. The raw cotton reserve, as I said, is the first one. Then there is investment reserve. That's only raised in two years, 1929 and 1930. Then, there is a [illegible] --

THE CHAIRMAN: It is no longer there?

MR. [illegible]: It is no longer there. That is one of the fluctuations I presume we have to account for. There is a reserve for bad debts.

THE CHAIRMAN: That is away back in 1920.

MR. [illegible]: 1919 and 1920; there was a contingency reserve which no longer exists; is that right?

MR. GIBSON: Yes.

MR. [illegible]: Then, there is a reserve for bad debts, and a reserve for [illegible] and then a general reserve.

THE COMMISSIONER: That is a very laudable reserve.

MR. HEWARD: And a very necessary one if you have got a pension fund.

THE COMMISSIONER: We will all have to be on it some day, Mr. Heward.

MR. HEWARD: This new social security plan offers us some hopes, your lordship.

MR. McRUER: The Government may pension us to get rid of us on this commission.

MR. HEWARD: Then, there is a general reserve.

THE COMMISSIONER: What is that supposed to be aimed at? Unexpected losses?

MR. HEWARD: It remained at the same figure of $116,552.43 from 1924 to 1935 and in the following year it increased to $266,552,43. I think it is just a general reserve.

MR. McRUER: It is an adjustment of a war contract that you did not take into profits.

MR. HEWARD: It is an adjustment of a war contract; is that it? $116,000 of that arose that way.

THE COMMISSIONER: Why is that held this way?

MR. HEWARD: I suppose it is held as a general reserve against bad times.

MR. McRUER: If that arose on a war contract and you did not take it into profits it would be a profit, wouldn't it?

MR. HEWARD: We put it into profits in our statement.

MR. McRUER: I mean on your books.

THE CHAIRMAN: That is a very laudable reserve.

Mr. HOWARD: And a very necessary one if you have got a paying fund.

THE CHAIRMAN: He will all have to be on it some day, Mr. Howard.

Mr. HOWARD: This new medical security plan offers it most hopes, and I believe it.

Mr. McK.: The government may wanton us to get rid of us on this commutation.

Mr. MACKAY: Yes, there is a general reserve.

Mr. CHAIRMAN: What is that supposed to be aimed at? Unexpected losses?

Mr. MACKAY: It remained at the same figure of $116,392.45 from 1926 to 1930 and in the following year it increased to $200,000.00. I think it is, as a general reserve.

Mr. McK.: It is an adjustment of a war contract that you did not take into profits.

Mr. M.: It is an adjustment of a war contract; is that it? $116,000 of that arose that way.

THE CHAIRMAN: Why do that held this way?

Mr. HOWARD: I suppose it is held as a general reserve against bad times.

Mr. McK.: If that arose on a war contract and you did not take it into profits it would be a profit, wouldn't it?

Mr. HOWARD: We put it into profits in our statement.

Mr. McK.: I mean on your books.

MR. HEWARD: It is in our books; we put it in the profit.

MR. McRUER: Did you take it into profits on your books? I have got a long nose for income tax. If you made a profit on a war contract and just carried it through as a reserve, or an adjustment on a war contract, you got a rebate on the war contract.

MR. HEWARD: Of course, if there is a profit on the war contract it would be shown there as a profit right away.

MR. McRUER: If it is a rebate on a war contract?

THE COMMISSIONER: A rebate.

MR. McRUER: Evidently the war had ended, and you had a contract and they did not want the goods and so they made a rebate, cleaned it up.

MR. HEWARD: Of course --

MR. McRUER: I am just wondering how it was not a profit of the company. If I got a contract with somebody and I came out $116,000 ahead at the end of it I think it would be included on my income tax.

MR. HEWARD: It was a profit; whether it was a taxable profit remains to be seen. We would have to investigate that, but it was a profit of the company unless it was compensation for expenses that they made in carrying out this contract, or something of that kind, but there is nothing to indicate.

THE COMMISSIONER: In any event, it constitutes the whole of this general reserve?

MR. HEWARD: No, it constitutes $116,552.45 of it.

THE COMMISSIONER: I thought you said $266,000?

[illegible]

MR. HEWARD: What is the remainder; is it added to the general reserve --

MR. WEBSTER: The remainder, Mr. Howson has the reconciliation.

MR. HOWSON: There were two or three small reserves they just dumped into that.

MR. HEWARD: There were two or three small reserves they just consolidated into the general reserve.

THE COMMISSIONER: Alright.

MR. HEWARD: Then, there was a special reserve which existed from 1927 to 1930, which no longer exists, and another special reserve which existed in 1927, a small one -- I beg your pardon, it is 1929. Then, there was a reserve for depreciation on investments. That is the investment reserve we have given you, which existed from 1930 onwards, and a reserve for exchange on sales, and then what is this one? Then there was the Halifax fire loss reserve, and a reserve for selling expense and a reserve for interest. All those reserves are shown fully on the books, my lord, and we have --

THE COMMISSIONER: I see what they are now. Now, just tell me then what is the meaning of the language you use here. You have here the earnings, take for any year you loke there. Adjusted for fluctuations in reserves. Supposing you just take the raw cotton reserve. How did you adjust your earnings there? What is your procedure?

MR. GLASSCO: Could I explain that, my lord?

THE COMMISSIONER: Certainly.

MR. MACKAY: What is the remainder; is it added to the general reserve --

MR. MORTON: The remainder we leave for the [illegible].

MR. MACKAY: There were two or three small reserve they just dumped into that.

MR. MORTON: There were two or three small reserves they just consolidated into the general reserve.

[illegible]

MR. MACKAY: Then, there was a small I reserve [illegible] entered from 1897 to 1890, with no interest added, and another special reserve which existed in 1897, a small one -- I see your question, it is late. Here, there was a reserve for depreciation on investments. That is the investment reserve we have given you, which existed from 1880 onwards, and a reserve for exchange on sales, and then what is left over. Then there was the Halifax Fire Loss reserve, and a reserve for rolling stores and a reserve for interest. All those reserves are shown full on the books, by law, and we have --

THE COMMISSIONER: I see what they are now. Now, just tell me then what is the meaning of the language you use here. You have here the earnings, note for any year you take there. Adjusted for distributions in reserves. Supposing you just take the raw cotton reserve. How did you adjust your earnings there? What is your procedure?

MR. MACKAY: Would I explain that, by law?

THE COMMISSIONER: Certainly.

MR. GLASSCO: If the raw cotton reserve was increased in any one year --

THE COMMISSIONER: In value, increased in value?

MR. GLASSCO: Yes, increased in amount by say half a million dollars by reason of making a charge to the operations of the company, then the operations would suffer to the extent of that charge. In other words, the profits would be shown as less by the xx amount of whatever charge they made for the purpose of increasing the raw cotton reserve.

MR. McRUER: That is, you made a profit in the first place, and then charged, or transferred it to the reserve, and here this shows the net results after the transfer has been made to the reserve.

MR. GLASSCO: No, we put it back. We take the profits as they were shown, which was after making adjustments in different years for the reserve, and we put this all back so that we get the profits before we adjust them in any way on account of reserve. That is the purpose of it. In other words, the history of the reserve has been, to some extent, to even out the profits, and this makes a more jagged picture because you put them all back to the straight result of operations without taking into account the provisions made for all sorts of contingencies by the management, but in order to get the whole picture, as Mr. Howson took these reserves into invested capital we followed his method, and we have taken the sum total of the reserves as part of the invested capital

Mr. GLADDOC: If the raw cotton reserve was increased in any one year --

THE COMMISSIONER: In value, increased in value?

Mr. GLADDOC: Yes, increased in amount by any half a million dollars by reason of making a change in the operations of the company, then the operations would suffer to the extent of that charge. In other words, the profits would be shown as less by the amount of whatever charge they made for the purpose of increasing the raw cotton reserve.

Mr. ADAMS: That is, you made a profit in the fiscal year, and then charged, in proportion to the reserve, and have this above the net results after the transfer has been made to the reserve.

Mr. GLADDOC: No, we put it back. We take the profits as they were shown, which was after making adjustments in different years for the reserve, and we put this all back so that we get the profits before we adjust them in any way on account of reserve. That is the purpose of it. In other words, the history of the reserve has been, to some extent, to even out the profits, and this makes a more jagged picture because you put them all back to the actual result of operations without taking into account the provisions made for all sorts of contingencies by the management, but in order to get the whole picture, as Mr. Hansen took these reserves into invested capital we followed his method, and we have taken the sum total of the reserves as part of the invested capital

at the end of each year and to be consistent we must therefore add back to profits all adjustments in these reserves. In other words, if the reserve goes up then the profits have to go up too. We get the position as to profits before any adjustments are made to them in respect to reserves at all.

THE COMMISSIONER: Then, these figures in this column beginning with $279,562.60 are arrived at that way, are they?

MR. GLASSCO: Yes, my lord.

MR. McRUER: I want to be clear about this. Take the red figure the fourth from the bottom; that would show that apparently from this that the company had a loss in earnings of that year of $614,683.36. As a matter of fact a million dollars was transferred from the company's surplus account to the investment reserve to make up that loss that had been made on investments. The company's profits that year actually amounted to $725,589. That is correct, isn't it?

MR. GLASSCO: That is so. I think if your lordship would look at page two --

THE COMMISSIONER: It is only after making this transfer you get in the red.

MR. McRUER: You got into the red after transferring a million dollars to the investment reserve as against losses on investments. They charged it to surplus.

MR. HOWSON: They just charged it right off investments.

MR. McRUER: They wrote off investments -- they reduced the book value of the investments and said

we have lost a million dollars on our investments and they charged it against surplus account. It was not even a reserve so when you say earnings adjusted for fluctuations in reserves it does not give quite the correct picture because the company that year earned in its operations as a textile company $725,589.54, but as an investor that year, or in previous years, they had lost a million dollars.

MR. GLASSCO: My lord, I was conscious of that difficulty, and for that reason in preparing this exhibit on page two we showed exactly how it was done, exactly how these earnings were arrived at. If you look at page two, my lord, you will see in the first column that "net earnings available for dividends" is shown. Then, we add or subtract in each year the adjustments which were made for reserves, and in the year which Mr. McRuer refers to, 1953, a million dollars was lost and charged direct to surplus.

MR. McRUER: That was not an adjustment for reserve.

MR. GLASSCO: No, it is in another column.

MR. McRUER: You say "earnings adjusted for fluctuations in reserves." That was not a fluctuation in reserve at all. That was a loss on investments.

MR. WEBSTER: It was a reserve set up out of surplus.

MR. GLASSCO: It was a reserve set up out of surplus.

THE COMMISSIONER: Take that same year Mr. McRuer refers to on page two. Your net earnings available for dividends were $622,000. Then, you show a deduction of $236,882.

we have lost a million dollars on the investments and they showed it against current income. It has not even a reserve so what they are doing is passed for fluctuations in reserves. It does not give the correct picture because the reserve is not in its over-sized one a bad in reserve [illegible], but as an investor that is, or in [illegible] they had lost a million dollars.

MR. ROBSON: My lord, I was [illegible] difficulty, and for that reason in preparing this exhibit on page two we added exactly, or it may [illegible] exactly how these earnings were arrived at. If you look at page two, my lord, you will see in the [illegible] column that "net earnings available for dividends" is shown. Then, we add or subtract [illegible] adjustments which were made for [illegible] and in the [illegible] which Mr. Holmes refers to, [illegible] a [illegible] was lost and charged direct to [illegible].

Q. HOLMES: I did not see [illegible] the [illegible].

A. GRYSON: No, it is in another [illegible].

Q. HOLMES: You say [illegible] "[illegible] in reserves." [illegible] a [illegible] [illegible] it [illegible]. That was a loss in [illegible].

A. [illegible] It was a reserve [illegible].

Q. [illegible] It was a reserve [illegible].

THE CHAIRMAN: [illegible] refers to on page two. [illegible] for dividends were [illegible]. [illegible] of $[illegible].

MR. GLASSCO: That means, my lord, if they maintained their reserves at the same amount they were in the previous year their profits, instead of being $622,000 would have been $236,000 less, but by drawing on reserves to the extent of $236,000 they did show $622,000. Now, in the same year there is that extraordinary item of one million dollars, which is a reserve created by charging direct to surplus.

MR. McRUER: It was not a reserve. It was a loss written off.

MR. GLASSCO: It was written off by means of providing a reserve and then applying the reserve.

MR. GORDON: It was not a realized loss.

MR. McRUER: Then, it might have come back in by the rise in the prices.

MR. HEWARD: As a matter of fact, are we not fighting over something that is very immaterial?

THE COMMISSIONER: It is only as to the understanding of this page 3. What you do then is you add these two red figures together and you subtract the net earnings available from them and that is the way you get your $614,000 in the red.

MR. GLASSCO: Yes, my lord.

MR. McRUER: On your ratio of earnings to invested capital for that particular year 3.35% of a loss isn't an accurate statement because that was not the ratio of the earnings of the company to invested capital.

THE COMMISSIONER: It does not show the result of the year's operations.

MR. MACNOCO: That means, my Lord, if they wrote up their reserves at the same amount they made in the previous year their profits, instead of being $[illegible], would have been $850,000 less, but by crediting on reserves to the extent of $[illegible],000 they did show $850,000. Now, in the same year there is this extraordinary item of one million dollars, which is a reserve created by charging direct to surplus.

MR. [illegible]: It was not a reserve. It was a loss written off.

[illegible] providing a reserve and then by doing the reserve.

MR. [illegible]: It was not a realized loss.

MR. [illegible]: Then, it might have come down in by the rise in the profits.

MR. [illegible]: [illegible] writing over something that is very [illegible]?

THE COMMISSIONER: It is only as to the [illegible] of this page 8. What you do then is you add these two red figures together and you can then see what earnings available from them and that is the way you get your $[illegible],000 in the red.

MR. MACNOCO: Yes, my Lord.

MR. [illegible]: Is your ratio of earnings to invested capital for that particular year 3.88% of a loss isn't an accurate statement because they was not the ratio of the earnings of the company to invested capital.

[illegible] It was not more the result of the quality [illegible].

MR.GLASCO: No, my lord, but the genius of this statement, if there is one --

THE COMMISSIONER: To understand this you have to take all these pages together. I see the way it is.

MR. HEWARD: My lord, I have a note on that subject which I was trying to turn up as I was going to deal with that particular feature later. My learned friend criticizes it in his brief. I would just say this, looked at over the period of years, over the whole period there it changes the ratio by substantially less than one-half of one per cent. I think it is somewhere around one-third of one per cent. I have the notes somewhere here.

THE COMMISSIONER: That is from 1906 down to 1936.

MR. HEWARD: It changes the average ratio, not in each year, but changes the average ratio.

THE COMMISSIONER: For the 30 years.

MR. HEWARD: On the 31 years it changes the average ratio by less than one-half of one per cent.

MR. McRUER: What does?

MR. HEWARD: That million dollar item, that change you were complaining about in 1933.

MR. McRUER: I know, but it was for the particular year. It is a red figure that hits me in the face and it should be a black one; that is all.

MR. HEWARD: We maintain it is a justified reserve taken out of profits to cover a loss and if not realized it may have come back; it may have been switched back on a later adjustment.

MR. GILLOOD: No, my lord, but the issues of this statement, if there is one --

THE COMMISSIONER: So understand this you may to take all these pages together. I see the way it is.

MR. GILLOOD: My lord, I have a note on that subject which I was trying to turn up as I was going to deal with that particular question later. My learned friend criticizes it in his brief. I would just say this, looked at over the period of years, over the whole period there is changes the ratio by arithmetic less than one-half of one per cent. I think it is somewhere around one-third of one per cent. I have the notes somewhere here.

THE COMMISSIONER: That is from 1906 down to 1929.

MR. GILLOOD: It changes the ratio a trifle, but in each year, but changes the average ratio.

THE COMMISSIONER: For the 30 years.

MR. GILLOOD: On the 31 years it changes the average ratio by less than one-half of one per cent.

MR. MONTGOMERY: What cost?

MR. GILLOOD: That million dollar item, the change you were commenting about in 1930.

MR. MONTGOMERY: I know, but it was for the particular year. It is a red figure that bits as in the book one it should be a black cent that is all.

MR. GILLOOD: He contends it is a fantastical variance taken out of proportion to cover a loss and if my contention is not borne out I will stand corrected. Look at a line at random.

THE COMMISSIONER: This column means your earnings after you have made use of that in connection with your reserves one way or another.

MR. HEWARD: The third from the left and the fourth from the left shows what we must add back --at least, I am wrong, my lord. This second column from the left shows the earnings after we have added back the reserves. Mr. Glassco I think in his evidence pointed out that he does not admit the propriety of including those reserves, but we wanted to meet Mr. Howson on his own ground in preparing these statements, and we did include them. We have, for instance, a reserve which is a bad debt reserve which is calculated to take care of the amount of bad debts which we feel pretty sure we are going to have in a year, and we feel that should not properly be included in the profits nor in the invested capital, but in order to meet the Commission auditor on his own ground we have put them back into earnings, every one of these reserves, including bad debts and the raw cotton reserve and everything.

MR. McRUER: You have to for income taxes, don't you?

MR. HEWARD: Not all of them, no, no.

MR. McRUER: Well, most of the reserves.

THE COMMISSIONER: Alright, I think I follow you now.

MR. McRUER: There is just one question before you leave that. Can you tell us now whether the company can say whether their investments have appreciated by a million dollars since that transfer was made in

THE COMMISSIONER: This column covers your earnings after you have made use of that in connection with your reserves one way or another.

MR. BRAUN: The third from the left and the fourth from the left show what we must add back --at least, I am trying, my lord. This second column from the left shows the earnings after we have added back the reserves. Mr. Gibson I think in his evidence pointed out that he does not admit the propriety of including those reserves, but we wanted to meet Mr. Dawson on his own ground in preparing these schedules, and we did include them. We have, for instance, a reserve which is a bad debt reserve which is accumulated to take care of the amount of bad debts we feel pretty sure we are going to have in a year, and we feel that should not properly be included in the profits nor in the invested capital, but in order to meet the Commissioner auditor on his own ground we have put those back into earnings, every one of those reserves, including bad debts and the raw cotton reserve and so-forth.

MR. MORGAN: You have to for income taxes, don't you?

MR. BRAUN: Not all of them, no, no.

MR. MORGAN: Well, most of the reserves.

THE COMMISSIONER: Right, I think I follow you now.

1934?

MR. GORDON: They have come back about half way.

MR. McRUER: 1933, I mean.

MR. GORDON: You see, we reduced our reserve there by half a million as we pointed out in evidence, switched that half million back.

MR. McRUER: I know, but there has been a considerable appreciation in shares since that adjustment was made.

MR. GORDON: I cannot tell you exactly what it is to-day. It is probably above half a million now.

MR. McRUER: Since your dividend on Montreal Cottons it ought to be.

MR. HEWARD: I think we have established now how this statement on page 3 is made up. What I want to point out there is it shows that the average ration of earnings to invested capital as shown in the third to last column, invested capital, throughout the 31 year period amounted to only 9.12%. Now, my lord, if we exclude the years 1916 to 1920 which the evidence has shown to have been abnormal years on account of the War, exporting to the United States, and during that time the millsx were working at a rate greater than their normal capacity, far greater, I am instructed, and during which time occurred a period when the company had some unusual earnings owing to purchases of raw cotton prior to a large rise in the market price of that raw material, and that higher value was in existence at the end of the

by half a million as so pointed out in evidence, and added that half million back.

Mr. MARTIN: I know, but there has been a considerable appreciation in shares since that agreement was made.

Mr. GOODWIN: I cannot tell you exactly what it is to-day. It is probably more that a million now.

Mr. MARTIN: Does your dividend on preferred account it ought to be.

Mr. GOODWIN: I think we have established now how this statement on page 3 is made up. What I want to point out there is it shows that the average ratio of earnings to invested capital as shown in the third per cent actual amounted to only 6.18%. Now, my lord, if we include the years 1913 to 1920 which the evidence has shown to have been abnormal years on account of the war, exporting to the United States, and during that time the mills were working at a

I am instructed, and during which time our net c

value of shares in the market had been varying according to fluctuations in the market price which in a

[illegible] Value and it depends on the [illegible]

year; so if we exclude these four years, which I think are not typical -- five years, which are not typical the ratio of earnings to invested capital--

MR. McRUER: Why not exclude the depression years?

MR. HEWARD: I will deal with them later on.

MR. McRUER: If you are going to exclude the fat ones why not the lean ones?

MR. HEWARD: I will deal with the depression years later. In the last 10 years I show them both.

MR. McRUER: Over the 30 year period if you pick out the fat years and exclude them why not pick out the lean years and exclude them? We may have another war.

MR. HEWARD: As a matter of fact, I am instructed we were going about double capacity at that time during the War, and that certainly is not normal.

MR. McRUER: You are going half capacity in the depression years.

MR. HEWARD: No, not altogether. I will deal with those in a minute, because I think my learned friend is quite right, we should compare five prosperous years with five lean years. But here we are. The ratio during the 31 years, cutting out those very abnormal years, the ratio for the rest of the company's life is found to be only 8.28%.

"It is also useful to consider" -- I submit --

"--the record in regard to the last ten fiscal years", and I think this is where my learned friend and I are on common ground,--that is the years ending March 31 from 1927 to 1936 because these comprised

a period of five years, 1927 to 1931, which were substantially a period of general prosperity, and a period of five years, 1932 to 1936, which took in the depression period.

"In the first five year period (1927 to 1931) the earnings were at the rate of 9.61%",-which is higher than the average for the 31 years --"of the invested capital. For the second five year period (1932 to 1936) the earnings were at a rate of 4.84%."

Therefore we get in the last 10 years, which is a very useful period to take for an inquiry of this kind, it seems to me, a 10 year period half good and half lean, and we find the good years gave 9.61% and the lean years 4.84%, and the average for the whole ten years was 7.23%.

THE COMMISSIONER: For the whole ten?

MR. HEWARD: For the whole ten.

THE COMMISSIONER: How much?

MR. HEWARD: 7.23%. That is in my factum, my lord, on page 12. I call attention in my factum, my lord, to the fact that that 7.23% is very little in excess of the rate of 6% which up to the re-financing, the time of the re-financing in 1935, the company had to pay for money borrowed by means of bonds secured by a first mortgage on its properties.

-- The Commission adjourned for a short recess.

(Page 17550 follows)

a period of five years, but so long, moreover, substantially equal at present (actually, not a period of five years, but so long that it has the longest period).

"D. The first ten years (1922 to 1931) the earnings were at the rate of 8.01%, which is higher than the average for the 21 years --"of the longest period".

period (1922 to 1931) the earnings were at a rate of 4.8%."

Therefore we get in the last 10 years, which is a very useful period to take for an inquiry of this nature, it seems to me, a 10 year period half good and half lean, and we find the good years give 8.01% and the lean years 4.8%, and the average for the whole 20 years has 7.4%.

THE LORD CHAIRMAN: For the whole 20?

MR. BRYDIE: For the whole 20.

THE CONCILIATOR: How much?

MR. BRYDIE: 7.4%. That is in my fourth, my 20, on page 12. I call attention to it, mother, my lord to the fact that 7.4% is very little in excess of the rate of 6% which up to the re-financing, the time of the re-financing in 1925, the company had to pay for money borrowed by means of bonds secured by a first mortgage on its properties.

-- The Commission adjourned for a short recess.

(Here lunch followed)

-- After Recess:

MR. HEWARD: Then, my lord, just closing out with this Exhibit 1232 for the moment, we find that in the year 1936 the ratio of earnings to invested capital at cost - I use those words "at cost", my lord - in case I have not made myself clear I use the words, "Invested capital at cost," that is to say, eliminated the consideration that the company gave or got for its invested capital plus the accumulated surplus, which it plowed back, and plus these reserves and then not taking into account the write-up which was made of $9,800,000. That is what I mean by a cost, my lord. Now, ---

THE COMMISSIONER: And you do not include that $9,800,000 out of the $10,000,000 write-up, you are not including that?

MR. HEWARD: No, I have another table showing that which I will come to later on when I deal with the value of the investments, which I deal with in a later part of my brief. I think that is the true scientific method of judging earnings for a determination of this kind. We find that in 1936 the ratio of net earnings was 5.5%, and in 1935 6.05%, and in 1934 19.12% and then in 1933 3.35% loss, taking into consideration that transfer which we had to make out of profits for the write-down of the investment on our net worth. Taken into consideration on both sides, both in our net worth and in our profits.

-- After recess.

Mr. McLean: Then, my lord, just closing out this Exhibit 1066 for the moment, we find that in the year 1930 the ratio of earnings to invested capital at cost - I use those words "at cost", my lord - by case I have not made yet clear I use the "invested capital at cost," that is to say, eliminating the consideration that the company gave or got for the invested capital plus the accumulated surplus, which is plowed back, and plus [illegible] dealing it to account the [illegible] of [illegible]. That is what I mean by it, my lord. ---

Mr. [illegible]: And you do not include that [illegible] out of the 110,000,000 write-up, [illegible] including it?

Mr. [illegible]: No, I have another [illegible] which I will come to later on when I deal [illegible] value of the investments, which I deal with in a [illegible] part of my evidence. I think that is the true scientific method of judging earnings for a determination of this kind. We find that in 1930 the ratio of net earnings was 3.5%, and in 1931 6.00%, and in 1932 10.10% and then in 1933 5.35% loss, taking into consideration that transfer which we had to make out of profits for the write-down of the investment on our net worth. [illegible] CHAIRMAN: [illegible] and in [illegible] and in [illegible]

Before I leave page 3, my lord, I think I should remind your lordship that the figures of earnings include all earnings whether distributed or not. Thus when I said that the average annual earnings for the 10 years from 1927 amounted to 3.7 of the invested capital, that is 3.2% consists of the earnings left in dividends as well as those paid out in dividends. I do not think what we distributed has any bearing on the returns on our einvestment.

MR. McRUER: I agree with that.

THE COMMISSIONER: Might distribute nothing.

MR. HEWARD: Might distribute nothing. Now, my lord, it should also be borne in mind, as I have said that that is at cost. I mention that in my Factum at page 12, that we have eliminated from the statement any consideration for common shares not represented by tangible assets, taking the tangible assets at the ~~outsdet~~ outset, as we said, at what wecomsidered their replacement value, namely, the depreciated cost on the books. If we had included the intangibles as part of the investment, my lord, - and I think fairly we should be entitled to include those because the Company certainly got value in those intangibles, then, of course, the ratio of earnings to the invested capital would be even lower than that shown on page 3.

Now, I come to a point where I want to point out that in dealing with the capital invested the amounts invested by the Bond Holders of the Company have not

before I leave page 5, my lord, I think I should
remind your lordship that the figures of earnings
include all earnings whether distributed or not. When
when I said that the average annual earnings for the
10 years from 1927 amounted to 5.7 of the invested
capital, that is 5.8% capital of the earnings left
in dividends as well as those paid out in dividends.
I do not think that is distributed has any bearing on
the returns on our investment.

MR. MORGAN: I agree with that.

THE COMMISSIONER: Right otherwise nothing.

THE MARQUIS: Open questions [illegible]. Now, my
lord, it should also be borne in mind, as I have said
that that is an asset. I question that in my Proofs
at page 14, that we have eliminated from the assessment
any consideration for common shares not represented
by tangible assets, making the tangible assets at the
balance sheet cost, as we said, at that depreciated book
replacement value, namely, the depreciated cost on the
books. If we had included the intangibles as part of
the investment, my lord, - and I think fairly we should
have [illegible] the [illegible] of [illegible],
the [illegible] of [illegible] the [illegible] would be
even lower than that shown on page 5.

Now, I come to a point where I must [illegible]
[illegible] the [illegible] [illegible] the [illegible]
[illegible] the [illegible] [illegible] of the [illegible] have not

been taken into consideration but only the amounts invested by the preferred and common shareholders. If the amount invested by the bond holders had been taken into consideration the ratio of earnings in relation to invested capital would have been even lower than that shown on page 8 of Exhibit 1232.

THE COMMISSIONER: What do you do with the interest on the bonds?

MR. HEWARD: In my opinion they should be taken into consideration and I have prepared a statement for that purpose. I say here in that consideration it is quite proper to include the amount invested in bonds as well as those invested in the various classes of shares - that is, that all classes of investments should be included. Now, I submit that that is the case and I have prepared ---

MR. McRUER: We have done that in ours.

THE COMMISSIONER: Well, those who invest in bonds they lend money to the company and must be paid their interest if you earn it.

MR. HEWARD: Absolutely, I think the earnings on their investments must be taken into consideration.

THE COMMISSIONER: What I am saying, they are in a different class than the shareholders. They are lending you so much money.

MR. HEWARD: Yes, but I think it is part of the investment.

THE COMMISSIONER: They are lenders.

[illegible] have [illegible] [illegible] [illegible]

MR. HEWARD: I think it is situation as your lordship pointed out a little while ago - we would be there discriminating between a company which financed partly on bonds and partly on stock and a company which financed entirely on stock. My submission is that the proper scientific method is to take the whole of the permanent investment, no matter whether it is invested by a bondholder or preferred stock holder or common stock holder and treat that as the investment.

MR. McRUER: We have been abused for about three weeks for doing that.

MR. HEWARD: I did not join in that abuse.

MR. McRUER: I know you did not.

MR. HEWARD: Because to me it seems to be the scientific method. I agree with my friend it is.

THE COMMISSIONER: All right.

MR.HEWARD: Well, my lord, I prepared a statement on that basis or had a statement prepared - when I say "I prepared" I am being a little flattering because I could not prepare a statement on that basis - but I had those who were qualified to do so to prepare it, Messrs Clarkson, Gordon & Dilworth & Nash, and I have given copies to my friend and Mr. Howson and I would like to give a copy to your lordship. I presume we should give it a number.

THE COMMISSIONER: Yes, Exhibit No. 1356.

EXHIBIT 1356: Statement as to invested capital, including funded debt and earnings thereon.

MR. HEWARD: Now, that statement appears on the first page of this folder, Exhibit 1356, which I have just produced, and it will be noted that here again --

THE COMMISSIONER: What is your reference?

MR. HEWARD: The ratio of earnings to invested capital including the bonds appears on the first page and on the second page you will see how the earnings have been made up. We have taken the figures from Exhibit 1232, the second page of this Exhibit 1356, and added to it the bond interest and on the right hand column we have "Adjusted earnings on invested capital including funded debt." So that gives us our earnings.

THE COMMISSIONER: Having regard to all the investors?

MR. HEWARD: Having regard to all the permanent investors. I use that term advisedly, my lord, because I want to deal later on with bank interest. We note here again the figures as to invested capital have been adjusted so as to eliminate all consideration for any shares not represented by tangible assets. We have done the same treatment as given to Exhibit 1232, eliminated any shares which we contend was issued at the ~~outedet~~ outset for intangible ---

THE COMMISSIONER: You simply add bond interest.

MR. HEWARD: We add bond interest to the earnings and of course add bond debt to the invested capital. You see that on the first page, the "Funded debt" is the left hand column, second from the left.

Mr. [illegible]: Now, that statement appears on the Alberta General Sale Ledger, Exhibit 1000, which I have [illegible], and it will be noted that here again --

THE COMMISSIONER: What is your reference?

MR. HOWARD: The ratio of earnings to invested capital including the bonds appears on the first page and on the second page you will see how the earnings have been made up. We have taken the figures from Exhibit 1888, the second page of this Exhibit 1888, and added to it the bond interest and in the right hand column we have "adjusted earnings on invested capital including funded debt." So that gives us our earnings.

THE COMMISSIONER: Having regard to all the investment.

MR. HOWARD: Having regard to all the government investors. I use that term advisedly, my lord, because I want to deal later on with bank interest. We note here again the figures as to invested capital have been adjusted so as to eliminate all consideration for any shares not represented by tangible assets. We have done the same treatment as given to Exhibit 1000, [illegible] --- assets output for intangible ---

THE COMMISSIONER: You simply add bond interest.

MR. HOWARD: We add bond interest to the earnings and we have the total here as to invested capital. You see that on the first page, the invested debt is the last page shown, which you see is 1888.

Now, an examination of this statement contained on the first page shows that for the 31-year period from 1906 to 1936 the average ratio of earnings to invested capital, including the funded debt and adjusted to eliminate consideration for any shares not represented by tangible assets was only 8.05%. The figure for the same period, excluding those five years 1916 to 1920, is 7.56%. That is not shown there, it is just a computation.

THE COMMISSIONER: It is not in your Factum?

MR. HEWARD: I am afraid not. This was prepared subsequent to the writing of the Factum.

THE COMMISSIONER: What is that again?

MR. HEWARD: The figure for the same period, excluding those five years, 1916 to 1920, is 7.56%. For the five years 1927 to 1931 the figure is 8.85% . Those are the so-called fat years that my friend has referred to, and for the five-year period 1932 to 1936 it is 5.03 % . For the whole of that 10-year period from 1927 to 1936 it is 6.95%, and here again, of course, the earnings include both what was distributed and what was allowed to remain in.

Now, my lord, during the course of the argument there has been a great deal of discussion as to whether it would be appropriate in computing the return on investment to include in the investment the company's bank indebtedness, and I respectfully submit that there is considerable doubt as to whether from the scientific

point of view it is proper that that should be taken into consideration because bank indebtedness in a manufacturing company normally run is not in the nature of a permanent investment. It is usually an indebtedness payable on demand or maturing in a very short time after it is incurred. In fact, my experience has been looking at it from the opposite point of view, as acting for one of the banks, that in a manufacturing company nearly all the loans are demand loans or demand overdraft or very short term paper, and in a normally operated manufacturing business banking loans are usually made use of only to finance the business over an inventory peak or over a peak of other expenditures. I am speaking very generally now, my lord, but that is the situation.

THE COMMISSIONER: What do you mean by an inventory?

MR. HEARD: Supposing the company has to go out and buy at a certain period in the year when it is appropriate for it to buy a large supply of raw cotton - take a textile company - raw cotton which will not be manufactured and sold for some time, when its inventory is high, its inventory of raw cotton or even its inventory of finished goods or goods in process are high. Before those goods have got to the market it probably will need to finance at the bank, but there is a certain period in the year where it must finance a high peak of inventory, and it does that by a bank loan which gradually reduces as the materials

point of view it is proper that that should be taken
into [illegible] and [illegible] a
manufacturing company normally too is not in the nature
of a permanent investment. It is usually an inter-
ehange payable on demand or maturing in a very short
time after it is incurred. In fact, my experience
has been [illegible] it is from the open market point of view,
[illegible] company. [illegible] of a manufacturing
company nearly all the loans are found loans or [illegible]
overdrafts or very short term [illegible], and in a
normally operated manufacturing business banking loans
are usually made use of only to finance the business
over an inventory year, or over a week or three
opportunities. I am speaking very reasonably now,
my lord, but that is the situation.

Qu. [illegible]: What do you mean by an investment?

Ans. [illegible]: Supposing the company came to go out
and buy at a certain period in the year when it is
appropriate for it to buy a large supply of raw cotton -
take a textile company - raw cotton which will not
be manufactured and sold for some time, when its
inventory is high, its inventory of raw cotton or even
its inventory of finished goods or goods in process
are high. [illegible]
it probably will need to finance it the bank, but
[illegible]
[illegible] high [illegible], but it does find
[illegible] low [illegible] [illegible]

are turned into goods and those goods are turned into money, and so it is not in the nature of a permanent investment. It is fluctuating.

MR. McRUER: The canning companies is one of the best illustrations of that. The companies canning tomatoes and peas and all that sort of thing, they have to go out and finance purchases all at one time when they get stuff from the farmers and they need a loan to do it, and as soon as they get them canned they liquidate and pay off their loans.

MR. HEWARD: That is a very good illustration, where they buy seasonal goods at that time, and cotton is a seasonal raw material.

THE COMMISSIONER: What is your submission on that?

MR. HEWARD: I say in a properly operated business bank loans are usually made only to finance business at the inventory peak or peak of other expenditures which will be paid or substantially reduced in the course of the year out of normal receipts, out of the company's earnings.

THE COMMISSIONER: This is to say that bank loans are not invested in the company.

MR. HEWARD: They are not really part of the invested capital.

MRX THE COMMISSIONER: You say they are a part of the invested capital, Mr. McRuer?

MR. McRUER: Well, if you are going to take

the interest on bank loans, going to exclude it,- you have got to take the bank loan in or leave it out--

THE COMMISSIONER: At both ends.

MR. McRUER: You cannot do it.

THE COMMISSIONER: What is your argument?

MR. HEWARD: My feeling is that it is not part of the permanent investment, but I want to show the figures as the matter is debateable. Further reason why I think it is probably not essential to take into consideration, I would think that under those circumstances that the fluctuating bank loan which, from the bank's point of view, is supposed to be paid off once a year - I know that in talking to bankers - either paid off or reduced to a very low minimum, the bank credit can hardly be looked on as a part of the investment, but more as a purchase of a commodity for use in the operations.

THE COMMISSIONER: That is the way it would appear to me. I have been thinking it over since ithas been so much discussed with Mr. Kellock, and that is the way it looks to me.

MR. HEWARD: A company which, for example, borrows money from the bank to finance the purchase of its raw material over, say, a 90 or 120-day period is something in the same position in regard to investment as if they purchased those materials from the vendor and gave a 90 or a 120-day note. But, however, as I said, in order to ascertain what the position

the interest on bank loans, going to exclude it,-
you have got to take the bank loan in or leave it out--
of the calculation, by some means.

Mr. McGill: You cannot do it.

THE COURT: What is your opinion?

Mr. Hellock: My feeling is that it is not part
of the permanent investment, but I need to know the
figures as the matter is determined. In the last
way I think it is probably not essential to have the
calculation. I would like to know the circu-
stances that the fluctuating bank loan which, from
the bank's point of view, is supposed to be paid off
once a year - I know that in talking to bankers -
either paid off or reduced to a very low minimum,
the bank credit can hardly be looked on as a part of
the investment, but more as a source of a temporary
for use in the operations.

THE COURT: That is the way it would appear
to me. I have been thinking it over since there
been so much discussed with Mr. Hellock, and that is
the way it looks to me.

Mr. Hellock: A company which, for example,
borrows money from the bank to finance the purchase
of its raw material over, say, a 60 or 120-day period
is something in the same position in regard to paid-up
capital as if they purchased those materials from a
vendor and gave a 60 or a 120-day note. But, however,
as I said, it appears unnecessary that the question

was in this regard in connection with the Dominion Textile I have had prepared another statement showing the ratio during the 31-year period of net profits before bank interest, invested money or income tax to invested capital.

THE COMMISSIONER: That is another statement?

MR. HEWARD: Yes, my lord, and I am going to give it to you.

MR. McRUER: That is No. 11?

MR. HEWARD: Yes.

EXHIBIT 1357: Statement as to invested capital, including funded debt and bank and current loans, and earnings thereon.

MR. HEWARD: Before dealing with this perhaps I should describe in a very general way just what the banking accommodation of the Dominion Textile Company is because that is necessary in showing how the statement has been made out. Its borrowing from its banks are usually in the form of overdrafts or cotton acceptances and they fluctuate from nothing at certain periods of the year to between $1,000,000 and $2,000,000 at the peak period of expenditure, either raw cotton or other expenditures. In the preparation of this statement, the first page of this exhibit 1357, the bank borrowings have been figured on the monthly average throughout each year. Otherwise if we took the daily average I am afraid we would never get the statement into your lordship before the end

was in this regard in connection with the Dominion Textile's particular problem (interest) regarding the ratio during the 31-year period of not profits before bank interest, invested money or income tax to invested capital.

The Chairman: Just in another sentence?

Mr. Arthur Fox, my view, and I am going to give it to you.

Mr. Bryce: That is no. 117

Mr. Arthur Fox:

Assessment as to invested capital, including funded debt and bank and current loans, and earnings thereon.

Mr. Arthur: Nothing funded with bank,

I should describe it a very general way just that the banking accommodation of the Dominion Textile company is because that is necessary in meeting the statement has been made one. Its borrowing from its banks are usually in the form of overdrafts or section acceptances and they fluctuate from nothing at certain periods of the year to between $1,000,000 and $2,000,000 at the peak period of expenditure, either raw cotton or other expenditures. In the properties of this statement, the first page of this exhibit 1897, the bank borrowings have been figured on the average throughout each year. Otherwise if we used the [illegible] I do actually or [illegible] by the statement the [illegible] and

of the year, it would mean such a tremendous amount of work.

THE COMMISSIONER: Some years they were comparatively small, comparatively.

MR. HEWARD: Some years they were very small and in the early days they went up as high as $3,000,000.

THE COMMISSIONER: And went down as low as $15,000.

MR. HEWARD: In 1906 it was over $4,000,000 but I suppose that took in the constituent companies indebtedness. The whole thing is an average, the monthly average.

MR. McRuer: There must have been quite a change really in the nature of their business between 1906 and 1936 because the loan was nearly $3,000,000 down to 1916. That would look like carrying on business on working capital provided by the bank, and afterwards it became of a temporary nature.

MR. HEWARD: Certainly since 1919 it is very low.

MR. McRUER: It looks like banking accommodation of the character you were describing.

MR. HEWARD: Then, of course, it must be remembered that the accumulated surplus was getting larger each year, the earnings plowed back.

MR. McRuer: I have not forgotten that.

MR. HEWARD: And that would naturally be devoted to improving their liquid position. Some of that accumulated surplus was going to inventory and some

into plant but at the same time part of the earnings would probably go - depends on whether I suppose bank financing was cheap at that time - would go to reducing the bank loans. Then, of course, we had fresh capital in 1923 and again fresh capital in 1928. The 1928 fresh capital was used to finance the Sherbrooke and Drummondville plants. The 1923 was entirely fresh capital used just generally for the purposes of the company.

MR. McRUER: That accounts probably for the fact that your bank loan practically disappears.

MR. HEWARD: In December, 1922, that financing was--

THE COMMISSIONER: Well, your bank loan went down from $1,900,000 to $115,000.

MR. HEWARD: The statement shows that the average ratio of net profits to invested capital on a cost basis - that is to say, without taking into consideration the increase in the value of the investment but treating as invested capital both bank loans, funded debt and common shares, that for the 31-year period the average return was 7.77%. If there be excluded the five-years from 1916 to 1920 the ratio of earnings to invested capital is found to be only 7.32%. Then taking the last 10 years, my lord ---

THE COMMISSIONER: I suppose you take the fat and lean years separately?

MR. HEWARD: The last ten years 1926 to 1936 the ratio for the whole ten-year period was 6.8%.

into plant but at the same time part of the earnings would probably go - depends on whether I suppose bank financing was cheap at that time - would go to reducing the bank loans. Then, of course, we had from capital in 1956 and again from capital in 1962. The 1962 from capital was used to finance the Chatcroche and Cummondville plants. The only net unfavorably from capital used just generally for the purposes of the company.

MR. MARTIN: That accounts probably for the fact that you were less profitable in recent

MR. MCCANN: In December, 1962, net financing was

THE CHAIRMAN: Well, your bank loan went down from $1,900,000 to $115,000.

MR. MCCANN: The statement shows that the average ratio of net profits to invested capital on a cost basis - that is to say, without taking into consideration the increase in the value of the investment but treating as invested capital both bank loans, funded debt and common shares, that for the 5-year period the average return was 7.77%. If there be excluded the five-years from 1946 to 1950 the ratio of earnings to invested capital is found to be only 7.55%. Then taking the last 10 years, my lord ---

[illegible]

MR. MCCANN: The last ten years 1956 to 1965 [illegible] two-year period and 6.8%.

MR. McRUER: Then again that would be altered by the manner you treated that transfer of a million dollars in 1933. I cannot conceive - that was really a loss that year when you took a million dollars out of Surplus Account to provide for loss on investment, which is coming back. It has come back now to over half a million,---

THE COMMISSIONER: Well, we know, it stares us right in the face. We know what you are doing. You say the average rate for the 10 years was 6.81%?

MR. HEWARD: And for the first five years of that period the average ratio was 8.61% and for the last five years, 1932 to 1936, the earnings were at the rate of 4.92% and for the year 1936 we have the ratio 5.24%. This is in the table itself - 1935, 5.93%. 1934, 8.16%, and 1933, a loss of 1.10%.

Then in regard to that transfer of the surplus, as I pointed out, really what is most important, it seems to me, that over the whole period the difference would be only a fraction of 1%.

MR. McRUER: Yes, but in the last ten years that would show a profit of 3% in 1933, so that it would make quite a difference in your average for the last ten years.

MR. HEWARD: When we take it off our net worth I think we are entitled to take it off our surplus as well, at least to take it off our earnings.

Mr. [illegible]: [illegible] easily be allowed in the manner you treated that transfer of a million in 1932. I cannot conceive - that was really a loss that year when you took a million dollars out of surplus account to provide for loss on investment, which is another one. It has come back now to over [illegible].

The [illegible]: Well, we have, it shows on right in the form. We know that you are [illegible]. You may be reminded that the 10 years was 4.4% and

Mr. [illegible]: And for the first five years of that period the average ratio was 6.8% and for the last five years, 1932 to 1937, the average was at the rate of 4.3% and for the year 1938 we have the ratio 6.5%. This is in the table itself - 1933, 5.9%, 1934, 6.1% and 1935, a loss of 1.1%.

Then in regard to that transfer of the 1 million, as I point out, really what is most important, it seems to me, that over the whole period the difference would be only a fraction of 1%.

Mr. [illegible]: Yes, but in the last ten years that would show a profit of 2% in 1938, so that it would make quite a difference in your average for the last ten years.

Mr. [illegible]: [illegible] I think we have [illegible] in this as long as we have modified so that if you [illegible] it will, at least [illegible].

MR. McRUER: There are two ways of looking at it, you get it back again if your stocks go up.

MR. HEWARD: If we sell them.

THE COMMISSIONER: We will adjourn now.

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-- The Commission adjourned at 12.30 P.M. to resume at 2.30 P.M.

MR. MORRIS: There are two ways of looking at it. You get it back again if your stockings go.

MR. HAYES: If we sell them.

THE COMMISSIONER: We will adjourn now.

-- The Commission adjourned at 12.30 p.m. to resume at 2.00 p.m.

-- The Commission resumed at 2.30 p.m.

Mr. HEWARD: My Lord, when we adjourned this morning I had just finished discussing the earnings in relation to capital invested at cost, and we had looked at invested capital as represented first of all by stock and then by bonds and stock, and then by bank indebtedness. Now I would pass to page 15 of my factum, in which I deal with the ratio of earnings to the value of the investment.

"It is submitted, however, that in order to determine whether the measure of protection given to an industry is adequate from the point of view of permitting that industry to make fair and reasonable earnings, the proper and scientific method is to consider such earnings in relation to the value of the investment at the time of the determination."

I will develop that argument later.

The COMMISSIONER: Is that really the formula ?

Mr. HEWARD: It is one expressed in my own words.

The COMMISSIONER: Your words are all right, I do not mean that; but is the formula expressed here the proper one ?

Mr. HEWARD: I submit that it is, My Lord.

The COMMISSIONER: Some companies may have very much less invested in the way of common stock and other things than others.

Mr. HEWARD: I do not mean it in that sense, My Lord. I mean that we must look at the assets which lie behind the investment, no matter how that investment is constituted.

The COMMISSIONER: Youhave the value of the investment; that is the real value of the investment ?

— The Commission resumed at 4.45 p.m.

Mr. [illegible]: My lord, when we adjourned this morning I had just finished discussing the question in relation to capital invested at cost, and we had looked at investment capital as represented first of all by stock and then by bonds and stock, and then by cash [illegible]. Now I would pass to page 10 of my factum, in which I deal with the basis of estimates to the value of the investment.

It is submitted, however, that in order to determine whether the amount of protection given to an industry is excessive from the point of view of enabling that industry to meet fair and reasonable competition, the proper inquiry to be entered in to consider such matters is relative to the value of the investment at the time of the [illegible].

I will develop that statement later.

[illegible]: It was really the question I [illegible]. Mr. [illegible]: It is you expressed in my own words.

The [illegible]: Your words are all right, I do not mean that; but is the formula expressed here the proper one?

Mr. [illegible]: I submit that it is, my lord.

The [illegible]: Some companies may have a very much less invested in the way of common stock and other things than others.

Mr. [illegible]: I do not mean it in that sense, my lord. I mean that as more fair to the [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

The [illegible]: Basing the value of the [illegible] [illegible] fair to the real value of the [illegible]?

Mr. HEWARD: Yes.

The COMMISSIONER: Not the nominal value ?

Mr. HEWARD: Not what was originally put in but what is there to-day lying behind the securities which are in the hands of investors.

Mr. McRUER: You mean you must not recognize the fact that the tariff may have given you an opportunity to grow up and become strong and get a large investment behind the industry ? You mean you should not recognize that to-day ?

Mr. HEWARD: I mean whatever the value of the investment is to-day.

The COMMISSIONER: I understand you to mean that if the investment receives accretions from time to time out of the earnings of industry you count that in the value of the investment.

Mr. HEWARD: I am dealing with that later on.

The COMMISSIONER: That is a special case.

Mr. HEWARD: I deal with that point.

The COMMISSIONER: For the present you mean return on capital, the value of the investment ?

Mr. HEWARD: Yes.

The COMMISSIONER: Whether the earnings be reinvested in the industry and should be considered or not is a separate question.

Mr. HEWARD: I submit that they should, but I will deal with that phase of this particular question in a few moments if I may. I submit that in the order in council the well-known paragraph I have quoted in my brief where we find the words "profits and investments"--

The COMMISSIONER: Are you going to read that ?

Mr. DUNCAN: Yes.

The COMMISSIONER: Are the numbers valid?

Mr. HOWLAND: Not when you originally put in but what is there to-day taking behind the amount of money which are in the hands of investors.

Mr. HOWLAND: You mean you must not recognize the fact that the tariff may have given you an opportunity to grow up and become strong and get a large investment? Do you mean? You mean you should not recognize that to-day?

Mr. HOWLAND: I mean whatever the value of the investment is to-day.

The COMMISSIONER: I understand you to mean that if the investment receives consideration then on the one of the earnings of industry you count that in the value of the investment.

Mr. HOWLAND: I am coming with that later on.

The COMMISSIONER: That is a special case.

Mr. HOWLAND: I shall talk about.

The COMMISSIONER: For the present you mean returns on capital, the value of the investment?

Mr. HOWLAND: Yes.

The COMMISSIONER: Whether the earnings be reinvested in the industry one should be considered or not is a separate question.

Mr. HOWLAND: I admit that they should, but I will deal with that phase of this particular question in a few moments if I may. I admit, from the order I received for self-denial yesterday I have learned to be brief about so that not merely [illegible] but [illegible].

The COMMISSIONER: For the point is your duty -

Mr. HEWARD: I have a copy of the order in council. In the order in council providing for the appointment of this commission we find the declaration that--

> "....it is essential that full and complete information be available to the government covering a period of years with respect to costs, profits, wages, salaries and bonuses, tariff protection, investments, volume of production, and all other matters and things which together with information already available to the government will enable sound conclusions to be reached regarding the position of this and other branches of the textile industry in relation to British and foreign competition, and in particular, the extent to which the employer can reasonably and properly be expected to maintain employment over periods of temporary difficulty."

I say that where the words profit and investment, as used there, are to be taken in conjunction with the question whether the tariff protection is adequate, inadequate, or excessive, the scientific and proper method is to look at those earnings in relation to the value of the investment.

Now, to start off with, I point out that that is a rule which has been generally approved and adopted by tribunals in establishing rates which public utilities and similar undertakings shall be entitled to charge, and I have cited a number of cases; and I would ask Your Lordship, seeing that they are so apt and interesting in this connection, to bear with me while I read from these. I have cited only the parts relevant to the question at issue.

"Bluefield Water Works & Improvement Company

Mr. Speaker, I have a copy of the order in Council in the order in council providing for the appointment of this commission we find the declaration that—

"....it is essential that full and complete information be available to the government concerning a period of years with respect to costs, profits, wages, salaries and bonuses, tariff protection, investment, a volume of production, and all other matters and things which together with information already available to the government will enable sound conclusions to be reached regarding the position of this and other branches of the textile industry in relation to British and foreign competition, and in particular, the extent to which the employer can reasonably and properly be expected to maintain employment during periods of temporary difficulty."

I say that there the words profit and investment, as used there, are to be taken in our textile sense question whether the tariff protection in effect, or necessary, the minimum profit required in so long as those conditions in relation to the value of the investment.

Now, to start off with, I point out that there is a file which has been generally approved and recommended by Parliament, I may say, many years ago.

Mr. Speaker, I do not wish to speaking too long, and I do not wish to be in order, but I would like to read some extracts from the report of the Royal Commission on the Textile Industry.

"Material under review is a Dominion-wide industry

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"vs. Public Service Commission of the State of West Virgina, et al., United States Supreme Court, No. 256, decided June 11, 1923, 262 U.S. reports, page 2679.

In this case it was held inter alia as follows:

1. .....

2. In estimating the value of the property of a public utility corporation, as a basis for rate regulation, evidence of present reproduction costs, less depreciation, must be given consideration. P.689."

The COMMISSIONER: Does "present reproduction" mean replacement ?

Mr. HEWARD: The words "reproduction value" and "replacement value" are sometimes used interchangeably, and I think it does mean that here, because I understand that the final technical distinction between the two is this--that replacement value represents what it would cost to replace it with similar property, while reproduction value is what it would cost to reproduce the property exactly as it stands. I have seen that distinction made in a handbook on valuations and it sounds logical, but here it is used in the general sense. The two terms are usually used alternatively, and it means replacement or reproduction.

Mr. McRUER: Replacement might involve replacing with something that would do the job better, with more up-to-date machinery. I cannot see how you could reproduce a great many of these things.

The COMMISSIONER: This may have reference to the sort of company that harnesses water power,

for instance.

Mr. HEWARD: Yes.

The COMMISSIONER: And if you wanted to do it over again that would be reproducing it ? The term reproduction might be more apt in that case.

Mr. HEWARD: Yes; perhaps it should be used in place of the word replacement, because for practical purposes if you get some hing that will do the same work at perhaps a slightly lower cost, if it will fulfil the same function and be in the same condition as regards wearing out, depreciation, then you are replacing it rather than reproducing it; but you are replacing something that will give exactly the same service and perform the same function as the one which originally existed and in regard to whichthe question has arisen. I have seen that distinction made in a treatise on valuations, in which the statement is made that reproduction and replacement are very often used alternatively, but that the distinction between them, if any, is that one means to reproduce exactly the same thing in exactly the same condition as it stands now, whereas the other means to replace it by something of similar utility and in the same condition as to wear and tear.

The COMMISSIONER: In any event, the court in this case uses the word reproduction?

Mr. HEWARD: Yes.

The COMMISSIONER: It speaks of: "evidence of present reproduction costs, less depreciation". Consideration must be given to this.

Mr. HEWARD: Yes.

The COMMISSIONER: That is fair enough.

Mr. HEWARD: To continue:

for instance.

Q. [illegible]

The [illegible]: and if you remove so as to [illegible] again that would be reproducing it? The word reproduction ought to be used in that case.

Mr. [illegible]: Yes; perhaps it should be used in place of the word replacement, because for practical purposes if you put some [illegible] that will do the same work at perhaps a slightly lower cost, if it will fulfill the same function and be in the same condition as regards "fitness not", correlation, then you are replacing it rather than reproducing it; but you are replacing something that will give exactly the same service and perform the same function as the one which originally existed and in regard to watches particular has arisen. I have seen that distinction made in a treatise on patents, in which the argument is made that reproduction and replacement are very often used interchangeably, but that the distinction between them, if any, is that one seems to reproduce exactly the same thing in exactly the same condition as it stands now, whereas the other seems to replace it by something of similar utility and in the same condition as to wear and tear.

The [illegible]: In any event, the court is bound to use the word reproduction?

Mr. [illegible]: Yes.

The [illegible]: It speaks of "evidence of [illegible] reproduction costs, loss depreciation". [illegible] must be given to this.

Mr. [illegible]: Yes.

The [illegible] that is [illegible]

Q. [illegible] To [illegible]

"3. .....

4. Rates which are not sufficient to yield a reasonable return on the value of the property used, at the time it is being used to render the service of the utility to the public, are unjust, unreasonable, and confiscatory; and their enforcement deprives the public utility company of its property, in violation of the Fourteenth Amendment. P. 690."

Of course, we have not got the Fourteenth Amendment, but I submit that the question we are putting to ourselves is this: What is a reasonable return, and on what should a reasonable return be calculated? They say that if you do not give a reasonable return you are confiscating. But they declare that what is meant by a reasonable return is a reasonable return on reproduction or replacement value.

The COMMISSIONER: They say, "on the value of the property used"; but they say in arriving at that value reproduction costs less depreciation must be given consideration.

Mr. HEWARD: Yes. The next paragraph speaks of the value of the property used at the time it is being used.

Mr. McRUER: If you applied that to the tariff problem you would eliminate entirely the theory that a tariff is supposed to give an infant industry the opportunity to develop, and after it has been developed you must maintain the tariff at a sufficient level to give a return on the capital that has been built up in the industry; otherwise you are confiscating the industry.

Mr. HEWARD: I do not concur in that, because I

"4. .....

4. Rates which are not sufficient to yield a reasonable return on the value of the property used, at the time it is being used to render the service of the utility to the public, are unjust unreasonable, and confiscatory; and their enforcement deprives the utility owner of its property, in violation of the fourteenth Amendment. R. 1.

Of course, we have not yet the fourteenth amendment, but I submit that the question we are pursuing is essentially the same as the fourteenth amendment, and on what should a reasonable return be calculated they say that if you do not give a reasonable return you are confiscating. But they contend that what is meant by a reasonable return is a reasonable return on reconstruction or replacement value.

The Chairman: They say, on the value of the property used ; but they say in arriving at that value reproduction costs less depreciation must be given consideration.

Mr. Mc.Lean: Yes. The last paragraph speaks of the value of the property used at the time it is being used.

Mr. Hydie: If you applied that to the tariff problem you would eliminate entirely the theory that a tariff is supposed to give an infant industry the opportunity to develop, and after it has been developed you must maintain the tariff at a sufficient level to give a return on capital that has been built up in the industry (whether you are usefully employed or not).

Mr. Hydie: I do not think so. Suppose I

think that while that may be one of the motives of protection, protection is necessary so long as it is necessary to equate the differential in cost of production between the protected country--Canada for instance--and some other country from which competition is anticipated; and when in that respect you find differences in standards of living, differences --- in wages, and differences resulting from depreciated currency, then in that sense the infant industry never grows up from the point of view of the tariff, because if protection is intended to provide for the establishment, development and maintenance of an industry it is needed so long as that industry must compete with a country where the cost of production is less. It may be an additional argument in favour of tariff protection that it also helps to foster and develop an infant industry even where costs of production are equal in the other country. But I do not think that that is by any means the main motive or reason for tariff protection; and in any event if after an industry had become strong in relation to its own country the tariff protection were removed, that industry could no longer operate if the costs of production in other countries were lower.

The COMMISSIONER: Of course, cost of production is not the only thin.g You have the advantage of being at home.

Mr. HEWARD: Cost of production must be considered in conjunction with the cost of bringing the product here. When I calculate the cost of production I take into consideration the cost of production and delivery for sale in this market at a common point.

The COMMISSIONER: Yes.

Mr. HEWARD: I do not think, therefore, that is is by any means the prime motive of protection in this country or in any of the other principal countries that I can think of where the standard of living is the same as ours, or on a relatively higher plane than in other countries. I believe the prime motive of protection is to equate the differential to which I have referred--to use a term that has always puzzled me but which has been explained.

The COMMISSIONER: That is not the motive, but the object.

Mr. HEWARD: The object, yes.

The COMMISSIONER: The motive must be that it is better to have the industry than not to have it.

Mr. HEWARD: I was misusing the term.

The COMMISSIONER: I am not saying that to draw a distinction between terms, but I expect to hear from you later on as to just why this industry should receive protection at all. The answer must be--I gave it the other day to Mr. Kellock--that when you come to ask for tariff protection you are asking for a favour. You are compelling the consumer to pay more for the things he needs in the way of textiles than he would pay under free trade, and thereby you are imposing on him an indirect tax for your benefit, and you ask the government to forego the whole or a portion of the revenues they might collect from a tariff for revenue only such as some countries have--Sweden for example. Moreover, you are asking the Canadian exporters to take the risk of perhaps losing the whole or a part of their foreign market in consequence of debarring them from this market. These are only some of the things you ask the government and the

public to do for you, and I cannot conceive of a government consenting to do these things for you unless you can show that from the public point of view you are bringing into the community certain things that are of advantage to it. You are giving employment; that is one thing, and you may be doing other things as well. But I think that those things should be detailed and accentuated.

Mr. HEWARD: I do not know whether that is part of my function.

The COMMISSIONER: It is not a function of the government to say, "We must allow these things to go on so as to enable shareholders to make money, or a few gentlemen to become rich." No government would protect industry for that purpose, and there must be some substantial public good to be expected from the industry that receives protection. This is an industry that is not indigenous to the country; you do not get your raw materials here, for there is no raw cotton or raw silk here.

Mr. HEWARD: Nor is it indigenous to any of the principal manufacturing countries.

The COMMISSIONER: That is their concern. So far as we are concerned, you must show why the industry should be protected, and I think this is the opportunity for you to do so, in connection with this argument.

Mr. HEWARD: At this time, My Lord, or later ?

The COMMISSIONER: Oh no, not to-day. Later on, however, you must show precisely what are the benefits you offer the country in return for the favour you receive in the way of adequate protection. However, I interrupted you; you were about to say what that protection should be.

Mr. HEWARD: I was addressing myself to the question whether the protection afforded was adequate or inadequate, and I had not contemplated discussing the theory of protection.

The COMMISSIONER: That is not what I asked you to discuss. I am asking you to show that you deserve adequate protection. I do not suggest that you should do so to-day, but I do suggest that you should think it over.

Mr. HEWARD: I will think it over, My Lord.

The COMMISSIONER: In the meantime, assuming that you have demonstrated that you deserve adequate protection, what do you say is adequate protection?

Mr. HEWARD: I will assume for the moment that both the country and Your Lordship--I am assuming that --concede that the industry as a whole should be protected, and the question I now address myself to is: How should we judge whether protection is adequate, inadequate or excessive ? I had got down to the Bluefield Waterworks Case.

The COMMISSIONER: Go back to paragraph 4 at the top of page 4.

Mr. HEWARD:

"Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service of the utility to the public, are unjust, unreasonable and confiscatory; and their enforcement deprives the public utility company of its property, in violation of the Fourteenth Amendment. P. 690.

5. A public utility is entitled to such rates as will permit it to earn a return on the value

The COMMISSIONER: That is not what I mean you to discuss. I am asking you to show that you deserve adequate protection. I do not suggest that you need do so to-day, but I do suggest that you should give it some.

Mr. [illegible]: I will think it over, my lord.

The COMMISSIONER: In the meantime, assuming that you have demonstrated that you deserve adequate protection, what do you say is adequate protection?

Mr. [illegible]: I will assume for the moment that both the country and land industry--I am assuming the--assume that the industry is a whole should be protected, and the question I now address myself to is: How should we judge whether protection is adequate, inadequate or excessive? I had not come to the [illegible] point.

The COMMISSIONER: We have to determine a lot of points.

Mr. [illegible]:

Unless water are not sufficient to yield a reasonable return on the value of the property used in the case in its being used to render the service of the utility to the public, are rates, service charges and conditions; and their enforcement deprives the public utility company of its property, in violation of the Fourteenth Amendment.

Mr. [illegible]:

In a public utility it would be said [illegible] in the [illegible] it is only a [illegible] in the [illegible]

"of the property it employs for the convenience of the public equal to that generally being made at the same time, and in the same region of the country, on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. P. 692.

6. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility, and should be adequate, under efficient and economical management, to maintain its credit, and enable it to raise the money necessary for the proper discharge of its public duties."

That ends that case.

The COMMISSIONER: All that seems very reasonable.

Mr. HEWARD: I submit that is a sound principle, My Lord. I continue:

" State of Missouri ex rel. Southwestern Bell Telephone Company vs. Public Service Commission of Missouri, et al., United States Supreme Court, No. 158, decided May 21, 1923. 262 U.S. Reports, p. 276.

In this case it was held inter alia as follows:

1. Rates fixed by state authorityfor a public utility corporation must be such as will yield a fair return upon the value of its property devoted to the public service. P.287.

2. What will amount to a fair return cannot be ascertained by valuing the property as of

"past times without giving consideration to greatly increased costs of labor, supplies, etc., prevailing at the time of the investigation. Id.

3. An honest and intelligent forecast of probably future values is also essential, and this cannot be made if the highly important element of present costs be wholly disregarded. Id.

4. Rates admitting of a possible return of but 5 1-3 per cent, in net profits after allowing for depreciation, on the minimum value of the property of a telephone company, held wholly inadequate, considering the character of the investment and the interest rates then prevailing. P.288.

5. .....

McCardle, et al., vs. Indianapolis Water Company, United States Supreme Court, No. 37, decided November 22, 1926, 272 U.S. Reports, p. 400.

In this case it was held inter alia as follows:

1. In determining the present value of the property of a public utility for rate-making purposes, consideration must be given to prices and wages prevailing at the time of the investigation; and, in the light of all the circumstances, there must be an honest and intelligent forecast as to probable price and wage levels during a reasonable period in the immediate future. P.408.

2. In every confiscation case, the future as well as the present must be regarded. It must

"be determined whether the rates complained of are yielding and will yield, over and above the amounts required to pay taxes and proper operating charges, a sum sufficient to constitute just compensation for the use of the property employed to furnish the service; that is, a reasonable rate of return on the value of the property at the time of the investigation and for a reasonable time in the immediate future. P.408."

The COMMISSIONER: They seem to define there what a reasonable return is--"something that will yield over and above the amounts required to pay taxes and proper operating charges, a sum sufficient to constitute just compensation for the use of the property employed to furnish the service". That is what the court apparently held to be a reasonable return.

Mr. HEWARD: Yes, My Lord. That is in the public utility case, I shall deal later with the question whether a reasonable return for a public utility is less than a reasonable return for a manufacturing or an industrial company.

The COMMISSIONER: You do not quarrel with the language ?

Mr. HEWARD: No.

The COMMISSIONER: A larger return might constitute a reasonable return in the one case than in the other.

Mr. HEWARD: Yes, My Lord; I do not quarrel with the language.

The COMMISSIONER: The thing is to find out what is reasonable--in this case, whatever other things, besides those mentioned here, are pertinent to the textile industry.

Mr. HEWARD: Yes, My Lord.

whether the rates sanctioned or are yielding and will yield, over and above the amounts required to pay taxes and proper operating charges, a sum sufficient to constitute just compensation for the use of the property employed in the service. This is, a reasonable rate of return on the value of the property at the time of the investigation and for a reasonable time in the future.

The COMMISSIONER: May seem to define there what a reasonable return is--"reasonable rate will yield over and above the amounts required to pay taxes and proper operating charges, a sum sufficient to constitute just compensation for the use of the property employed in rendering the service". That is what the court apparently held to be a reasonable return.

Mr. MARSH: Yes, My Lord. That is in the public utility case. I shall deal later with the question whether a reasonable return for a public utility is less than a reasonable return for a manufacturing or industrial company.

The COMMISSIONER: You do not quarrel with the language?

Mr. MARSH: No.

The COMMISSIONER: A learned counsel might consider a reasonable return in the one case than in the other.

Mr. MARSH: Yes, My Lord; I do not quarrel with the language.

The COMMISSIONER: The thing is to find out what is reasonable--in this case, starting after bringing some analogy ---, but certainly in the public interest.

Mr. MARSH: Yes, My Lord.

"3. It is well established that values of utility properties fluctuate, and that owners must bear the decline and are entitled to the increase. P.410.

4. The weight to be given to the original and present costs of construction, and other items or classes of evidence, is to be determined in the light of the facts of the case in hand. P.410."

The COMMISSIONER: That is another way of putting what you read in the first case. In the first case it is said that costs of reproduction must be given consideration.

Mr. HEWARD: Yes.

The COMMISSIONER: Here they re-word it and say that the original and present costs of construction, and other items or classes of evidence, must be determined in the light of the facts of the case in hand. These are matters to be considered; they are not findings.

Mr. HEWARD:

"5. In this case prices and values have so greatly changed that the amount paid for land in the early years of the enterprise and the cost of plant elements constructed prior to the great rise of prices due to the war do not constitute any real indication of their value at the present time. P.410.

6. .....

7. .....

8. The validity of rates fixed for a public utility depends on property value as of the effective date of the order and for a reasonable

"3. It is well established that values of utility properties fluctuate, and that owners must bear the decline and are entitled to the increase. ...

4. The weight to be given to the original and present objects of construction, and other items or classes of evidence, is to be determined in the light of the facts of the case in hand. ...

The [illegible]: This is another way of putting what you read in the first case. In the first case it is said that costs of reconstruction must be given consideration.

Mr. [illegible]: Yes.

The [illegible]: Here they re-state it and say that the original and present costs of construction, and other items or classes of evidence, must be determined in the light of the facts of the case in hand. These are matters to be considered; they are not [illegible].

Mr. [illegible]:

"5. In this case proven the values have so greatly changed that the amount paid for land in the early years of the enterprise and the cost of first commodity construction prior to the great rise of prices due to the war do not constitute any real indication of their value at the present time. I.Ld.

6. .....

7. .....

8. The matter of what fixed for a property utility based on reasonable value at the date of the hearing and the [illegible]

" thereafter. P.411.

9. While the value of such properties do not vary with m frequent minor fluctuations in the prices of material and labour required to produce them, they are affected by and generally follow the relatively permanent levels and trends of such prices. P.411.

10. .....

11. In valuing the property of a waterworks company for rate making, the value of its water rights should be included, and likewise the "going concern value" of the plant. P.413."

In other words, they will not take it as scrap or salvage or bricks and mortar.

"12. .....

13. .....

14. .....

15. Rates of yield on investments in bonds plus brokerage are substantially less than the rate of return required to constitute just compensation for the use of properties in the public service. P.419."

Then we have another case in the Privy Council which was not a case of rate-fixing, but it has a bearing because it refers to present values. It is the case of the City of Toronto and the Toronto Railway Company. It was decided by the judicial committee of the Privy Council on October 24, 1924, and is reported at the place cited in my factum.

"Upon arbitration as to the value of a street railway being expropriated by a municipality, a fair basis of arriving at the value is to take the cost of reproduction as of the time of

"taking over and deduct therefrom allowances for depreciation, including obsolescence, obsoleteness and deterioration from whatsoever cause."

The COMMISSIONER: I remember an arbitration that was held in the west in 1926 over the acquisition of elevator property. It was just after this came up. You will find that case in the Dominion Law Reports. I happened to be on it on the board of arbitration myself, and Mr. Howe, the Minister of Transport, was one of the arbitrators.

Mr. HEWARD: In 1926 ?

The COMMISSIONER: Yes. I was chairman of the board. It was a matter of about eleven or twelve million dollars, and I remember we got our principles from this case.

Mr. HEWARD: Dominion Law Reports, My Lord ?

TheCOMMISSIONER: It was published in the Dominion Law Reports some time in 1926 or 1927.

Mr. HEWARD: It will be easy to find it. Next we come to the case of The Canada Southern Railway Company, the International Bridge Company (1883) 8 Appeal Cases 723. The Lord Chancellor, the Earl of Selbourne, at page 731, said:

"That being so, it seems to their Lordships that it would be a very extraordinary thing indeed, unless the Legislature had expressly said so, to hold that the persons using the bridge could claim a right to take the whole accounts of the company, to dissect their capital account, and to dissect their income account, to allow this item and disallow that, and, after manipulating the accounts in their own way, to ask a Court to say that the persons who have projected such an

"undertaking as this, who have encountered all the original risks of executing it, who are still subject to the risks which from natural and other causes every such undertaking is subject to, and who may possibly, as in the case alluded to by the Learned Judge in the Court below, the case of Tay Bridge, have the whole thing swept away in a moment, are to be regarded as making unreasonable charges, not because it is otherwise than fair for the railway company using the bridge to pay those charges but because the bridge company gets a dividend which is alleged to amount at the utmost, to 15 per cent. Their Lordships can hardly characterise that argument as anything less than preposterous."

The COMMISSIONER: That is all one sentence.

Mr. MEWARD: Yes. The Earl of Melbourne's dissertations were of considerable length.

Mr. McRUM: Those who wrote the Customs Act must have emulated him.

(17685 follows)

MR. HEBARD: Then, we have the New Brunswick case, my lord, ex parte Moncton T.E. & G.Company Limited --

MR. McRUER: Was the bridge depending on any privileges given to it by a government, or anything of that sort? Did that come up in that?

MR. HEBARD: I cannot remember, Mr. McRuer. I just saw the report.

MR. McRUER: It seems to have been an international bridge of some sort.

MR. HEBARD: The International Bridge Company and Canada Southern Railway.

THE COMMISSIONER: This was between two companies.

MR. HEBARD: It was evidently between xa railway company which was using the bridge and --

MR. McRUER: But one was apparently not dependent on the other for its right to exist.

MR. HEBARD: I am informed it is a bridge at Niagara Falls.

MR. McRUER: I was wondering what the parallel was between it and the Customs Tariff. You say you cannot exist if you do not get the Customs Tariff.

MR. HEBARD: They probably could not exist if they did not get the proper rates to make a reasonable return.

MR. McRUER: From whom?

MR. HEBARD: From people using the bridge, the railway company. Then, we have ex parte Moncton T.E. & Gm. Company Limited, New Brunswick Supreme Court, Appeal Division. We find Mr. Justice Grimmer stating at page 1118:

(Mr. McLean (Pembroke) in the Commons, June 1st, 1934, on private bill T.S. & S. Company Limited -)

MR. MONTON: Was the bridge depending on any privileges given to it by a government, or anything of that nature? Did it need an act to pass?

MR. [illegible] (Pembroke): [illegible], I have not seen the report.

MR. MONTON: It seems to have been an international bridge of some sort.

MR. [illegible]: The International Bridge Company and Canada Southern Railway.

THE COURT REPORTER: This was between two companies.

MR. [illegible]: It was evidently between an railway company which was using the bridge and --

MR. MONTON: But one was [illegible] not a [illegible] on the other for its right to exist.

MR. [illegible]: I am informed it is a bridge at [illegible].

MR. [illegible]: I am wondering what the penalty was between it and the Canadian Pacific. You may [illegible] exist if you do not get the Canadian Pacific.

MR. [illegible]: They probably could not exist if they did not get the power needed to make a reasonable income.

MR. MONTON: Who where?

MR. [illegible]: Been using the bridge, the main [illegible].

MR. [illegible]: [illegible] Company Limited, [illegible] Canadian Pacific.

MR. [illegible]: [illegible] Canadian Pacific [illegible] Railway.

MR. [illegible]: [illegible] Canadian Pacific [illegible] Railway.

MR. [illegible]: [illegible]

" It is now definitely settled following the judgment in the Canada S.R. case, supra"-- that is the one I have just cited -- "and Re Mersey Docks & Harbour Board; Toronto v. Toronto R. Co.; C. & G.T.R. Co. v. Wellman, and numerous other decisions in the U.S. Courts that after ascertaining the value of services the cost of reproducing the property used in furnishing the service at present cost of labour and materials less depreciation and not merely the original cost or value of the property at some other date must be considered and is the most satisfactory method of proof of such value, and therefore should be the proper rule to follow in fixing the rate base."

Then, we have Re Western Tolls, 19 Canadian Railway Cases, page 43:

" The contention that rates should be made on the basis of cost plus a fixed percentage to cover overhead or capital charges cannot be sustained nor can effect be given to contentions based upon results obtained by lines in the United States. It is in the public interest that railway tolls should be of such a character as to attract investment and render railway securities marketable. These tolls should be such as to give a fair return to the Railway Company independent of the reserves of liabilities"-- I don't know whether that should be "of" or "or", I will check that, my lord --"reserves of liabilities of such company."

THE COMMISSIONER: You see, it is in the public

It is now definitely settled following the judgment in the Canada S.S. case, supra -- that the one I have just cited -- "and no larger means of labour board; Toronto v. Toronto R. Co.; C. R. C.P.R. Co. v. Sullivan, and numerous other authorities in the U.S. Courts that after ascertaining the value of services the cost of reproducing the property less in translating the services at present cost of labour and materials less depreciation and roughly the original cost or value of the property at some other date must be considered and is the most satisfactory method of proof of such value, and therefore should be the primary rule to follow in fixing the rate base."

Then, we have to consider Lord, in Cambridge Water Works, case 88:

"The distinction that I have already as made on the basis of cost plus a fixed percentage to cover overhead or capital charges cannot be maintained nor can effect be given to contentions based upon results obtained by lines in the United States. It is in the public interest that a railway should be of such a character as to attract investment and render railway securities desirable. These traits should be used as to give a fair return to the railway industry (emphasis added) of the country of Canada" -- I don't know quoting but should be "of" or "for", I will stand pat, on such -- "consideration of liabilities of such railway."

The Board of Railway Commissioners, AT in its order

interest there, that railways should continue existing, that is what it means. "Railway tolls should be of such a character as to attract investment". Without investment in these times, at least, you would not have railways at all. Our railways are admittedly in the public interest. You must have railways, so that goes back to what I was saying. The textile industry also is in the public interest in Canada.

MR. McRUER: Of course, the railways give a service that the public otherwise would not have.

THE COMMISSIONER: That is what I am saying.

MR. McRUER: But textile companies do not give a service in that sense.

THE COMMISSIONER: I have told Mr. Howard he will have to argue that later.

MR. HEWARD: I am going to address myself to the general question of whether protection is worth while. That is really what it means.

THE COMMISSIONER: Insofar as this industry.

MR. HEWARD: Insofar as this industry is concerned. Now, my lord, I submit that --

> " The principle enunciated and adopted in the foregoing cases in xg regard to public utilities, namely, the principle that rates fixed must be such as will yield a fair return upon the value of the investment at the time of determination, is applicable with even greater force in the consideration of earnings as an element in the determination of the extent of tariff protection."

THE COMMISSIONER: Just a minute there.

MR. HEWARD: That is found on page 18.

THE COMMISSIONER: Yes, I know.

MR. HEWARD: "In the fixing of rates for a public utility it is usually a question only of doing what is necessary to safeguard the interests of an established utility and of the rate-paying public. In deciding, however, as to the sufficiency or insufficiency of tariff protection an additional factor enters into the question, namely, the encouragement of new investment in the industry concerned."

THE COMMISSIONER: You seem to take for granted that is a good thing.

MR. HEWARD: I do, my lord. I thought that Parliament by protecting us for many years had decided that was a good thing.

THE COMMISSIONER: You see, the industry concerned is the textile industry.

MR. HEWARD: Yes.

THE COMMISSIONER: Now, the encouragement of new investment in that industry is something that, according to the evidence, you yourselves have not been encouraging very much.

MR. HEWARD: I don't think you will find any attempt to discourage it in the cotton industry, my lord.

THE COMMISSIONER: Well, I am talking of the whole industry. That is to say, you do not say that it should be the policy of the Government to have all the factories possible going up in Canada and making

the commissioner, and a close house.

Mr. [illegible]: That is found on page 15.

THE COMMISSIONER: Yes, I know.

MR. [illegible]: In the fixing of rates for a public utility it is usually a question only of what is necessary to safeguard the interests of an established utility and of the rate-paying public. In deciding, however, as to the sufficiency or insufficiency of tariff protection on additional factor enters into the question, namely, the encouragement of new investment in the industry concerned.

THE COMMISSIONER: You seem to take for granted that it is a good thing.

Mr. [illegible]: I do, my lord. I assume that sufficient by protection as for such cases is desirable that was a good thing.

THE COMMISSIONER: You see, the industry concerned is the textile industry.

Mr. [illegible]: Yes.

THE COMMISSIONER: Now, the encouragement of new investment in that industry is something different, according to the evidence, so that protection has not been encouraging very much.

Mr. [illegible]: I don't think you will find any [illegible] it in the cotton industry, my lord.

THE COMMISSIONER: Well, I am talking of the whole industry. That is to say, you do not say that it should be the policy of the Government to give all the financial possible help to increase and encourage

cotton goods and silk goods.

MR. HEWARD: It just depends, my lord; if they go up to an uneconomical extent it should not be the policy, and I submit --

THE COMMISSIONER: But you see you say it should be the policy for your purposes. You say:

"In deciding, however, as to the sufficiency or insufficiency of tariff protection an additional factor enters into the question, namely, the encouragement of new investment in the industry concerned."

I think you better reconsider that.

MR. HEWARD: No, my lord -- I beg your pardon.

THE COMMISSIONER: For instance, if a tariff is totally prohibitive, as high as any government can go; you have a tariff that nobody can get over at all, the highest possible tariff, would that be a good thing to do just because it would encourage others to come in?

MR. HEWARD: No, my lord.

THE COMMISSIONER: That is what new investment must mean.

MR. HEWARD: I think our idea of an adequate tariff is one which puts us on an equal basis;by an equal basis I mean entitles us to compete on an equal footing, and still make a reasonable profit.

THE COMMISSIONER: I know, I understand all that. I say when you say here the tariff should go further than that and should have the effect of encouraging new industry -- encouraging new investment in the tex-

tile industry it strikes me you are going too far.

MR. HEWARD: I don't think it would be a proper point of view to protect only those that are in existence.

THE COMMISSIONER: Should you keep on protecting until you get into the country all the factories you can get? I do not really think so.

MR. HEWARD: All the factories that are economically possible.

MR. McRUER: Who is to decide that?

THE COMMISSIONER: We have a lot of evidence here. Take, for instance, in silk where the Association in question thought they had too much silk already and that further investments should be discouraged in that industry.

MR. HEWARD: Of course, it is a thing which cures itself because if there are too many some of them are going out of the picture.

THE COMMISSIONER: Yes.

MR. McRUER: Wouldn't there be a happy medium then where the tariff might save you from going out of the picture?

MR. HEWARD: I don't think the tariff should be designed simply --

THE COMMISSIONER: Perhaps you mean that in the case of your particular company. You are not afraid of new ventures.

MR. HEWARD: We would be afraid of new ventures if the prices got -- I do not ask for a tariff that will permit any company to come in.

file [illegible] it advises me you are using too far.

Mr. [illegible]: I don't think it would be a question of time or [illegible] Mr. [illegible]

The Council [illegible]: Should [illegible] would you get into the country [illegible] you [illegible].

Mr. [illegible]: If the [illegible] are economic [illegible].

Mr. [illegible]: He is to decide that.

The [illegible]: We have a lot of evidence from [illegible], for instance, in all where the [illegible] tion is [illegible] enough they [illegible] too [illegible] with already and that further investigations should be discouraged in the [illegible] country.

Mr. [illegible]: Of course, it is a thing which [illegible] itself because if there are too many [illegible] of them are [illegible] out of the picture.

The [illegible]: Yes.

Mr. [illegible]: Wouldn't there be a [illegible] where the [illegible] right [illegible] [illegible] out of the picture?

Mr. [illegible]: I don't think [illegible] [illegible] [illegible].

The [illegible]: [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

Mr. [illegible]: [illegible] [illegible] [illegible] [illegible] — I [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

THE COMMISSIONER: I am just saying perhaps you should reconsider what you are putting forward here.

MR. HEWARD: I will think it over carefully, my lord, but it seems to me --

THE COMMISSIONER: You are talking of the position to-day in Canada; that is what we are talking about, and having our eyes on the future. You say that the tariff should be so that it would encourage new investment in Canada in the textile industry. If you want to take that responsibility, alright.

MR. HEWARD: Yes, I am taking that responsibility, my lord. I think the ideal thing for this country is to have it producing -- that all the goods that it needs are produced here by its own labour.

THE COMMISSIONER: All the goods it needs?

MR. HEWARD: All the goods it needs.

THE COMMISSIONER: I suppose that would apply to every other country, too.

MR. HEWARD: It might.

THE COMMISSIONER: We would all be living in a hot house.

MR. McRUER: How could our exporters then compete on the export market in the world?

THE COMMISSIONER: I really think that is not consistent with what you have been saying all along, that the measure of protection you want is as much as will afford you reasonable protection in our own market.

MR. HEWARD: In our own market.

THE COMMISSIONER: Having regard to the costs of

production.

MR. HEWARD: Having regard to the costs of production and a reasonable profit.

THE COMMISSIONER: That is a different thing.

MR. HEWARD: I am looking at this thing from the point of view not of one company who perhaps might be anxious to keep out all competitors, even domestic or otherwise, but I am looking at it in the light of the theory of protection that the avowed policy of the tariff, or one of the objects of the tariff, is to promote employment of labour in this country.

THE COMMISSIONER: Yes, I know, but that must be done by reasonable means.

MR. HEWARD: I did not get that.

THE COMMISSIONER: That must be done by reasonable means. You might have a whole lot of other factories coming in here and taking some of your employees away from you, and also would lessen your business.

MR. HEWARD: All we are asking for is to be able to compete on an equal footing with the others; if too many came in that would hurt us.

THE COMMISSIONER: Well, alright; your company may look at it that way, but I was pointing out that, for instance, in the evidence the Silk Association does not look at it that way at all.

MR. HEWARD: My lord, I hold no brief for them.

THE COMMISSIONER: No, I am just saying that; if you mean by this you are speaking for the whole industry —

MR. HEWARD: I am speaking for the whole industry. I am looking at it from the point of view of what is the proper theory of the adequacy of protection.

MR. McRUER: How could a tariff offer such protection as will enable those proposing to invest new capital in the industry to obtain a fair rate of earnings on the amount of capital which is necessary at that time to purchase the assets?

THE COMMISSIONER: You would have to give more than a tariff, I think.

MR. McRUER: You would need to subsidize them indefinitely. I cannot see how you can guarantee that.

MR. HEWARD: Of course, what I mean is this, my lord, that you cannot guarantee -- nobody can guarantee that any particular industry will have a reasonable return but I think conditions should be such that they will be put in the same position as industry generally, that if they are well managed, and if times are good they should be in a position to operate and get a reasonable return. In other words it is simply a question, it seems to me, when we are looking at it from the point of view of the adequacy of protection, of whether their manufacturing costs -- whether the tariff is sufficient to protect them against difference in costs of production, and if that is done then I don't think that the tariff has to assume -- that the protection has to assume any more responsibility for them. It must not guarantee them, naturally, any return. I just simply put them in a position that, if they are

properly managed, they can earn a reasonable return.

THE COMMISSIONER: If you stopped there I would understand it better, but you do not stop there. You say there is an additional factor, and that is the encouragement of new investment.

MR. McRUER: And at the foot of the next paragraph.

THE COMMISSIONER: You keep right on.

MR. McRUER: You go on with the same statement.

MR. HEWARD: What I submit is that tariff protection is not only intended to ensure the survival of those engaged in the industry now, but to procure the establishment of new industry, and you have got to encourage capital to do that. Supposing a person coming along and wanting to establish a textile mill in the country saw that there was a considerable domestic market, but that in order to put up the mill he must buy his property at a certain price, that it would cost him so much at to-day's prices. Unless he knows that he gets sufficient protection from outside competition to enable him to earn a reasonable return on the property which he is going to buy for the purpose of establishing that industry he is not going to invest, if he is a wise and prudent man. Now--

MR. McRUER: Do we need more cotton industries in Canada now, or do we need to keep the tariff at a level that would encourage other ones to come in?

MR. HEWARD: I think we need anything which would give us more employment here at home.

THE COMMISSIONER: I think that is a very pertinent question. For instance, there is still a certain amount of the Canadian market that is filled by importations in cottons, more in woollens and less in hosiery, for instance. Now, do you think that exists because we have not got enough of the home industry?

MR. HEWARD: Do I think --

THE COMMISSIONER: I say, for instance, there is a portion of the cotton field in Canada which is occupied by importations.

MR. HEWARD: Yes.

THE COMMISSIONER: And a small portion of the full fashioned hosiery is occupied by importations, a very small portion by importations, and a large portion of the woollens is occupied by importations. Now, do you think that is due, in any degree, to the fact that we have not enough woollen factories in this country, and enough cotton factories and enough silk factories?

MR. HEWARD: It may be due to the fact that those that are here cannot operate at a profit, because they are losing money.

THE COMMISSIONER: That is another question, Mr. Heward; that may be so. I am not saying that, but I say is it in any degree attributable to the fact that we have not got enough cotton factories, or have not got enough woollen factories? You are talking about new investment coming into this industry

MR. CHAIRMAN: I think that is a very particular question. Therefore, since it will a somewhat [illegible] of the question which is a Field of importations in cotton, more in woollens and less in hosiery, for instance. Now, do you think that which because we have not yet enough of the home industry?

MR. [illegible]: Do I think --

MR. [illegible]: I say, for instance, there is a portion of the cotton field in Canada which is occupied by importations.

MR. [illegible]:

MR. [illegible]: And a small portion of the full fashioned hosiery is occupied by importations, a very small portion by importations, and a large portion of the woollens is occupied by importations. Now, do you think that is due, in any degree, to the fact that we have not enough woollen factories in this country, and enough cotton factories and enough silk factories?

MR. [illegible]: It may be due to the fact that those [illegible] are losing money.

MR. [illegible]: That may be so. I am not saying that, but I say is it in any degree attributable to the fact [illegible]

and new woollen factories going up, new cotton factories going up, and new silk factories going up. Do you say we should have a tariff sufficiently high to see that is done? Do you say that to-day the reason why our home industry has not got 100% of the home market is because, among other things, we have not got enough factories?

MR. HEWARD: I have not considered that question.

THE COMMISSIONER: If you did I would be very much surprised.

MR. HEWARD: Because it is probably due to the fact that on certain lines of textiles the cost of production in the other countries is lower.

MR. McRUER: The brief is being submitted as of to-day, and one of the contentions that is put forward is that the tariff to-day should be sufficient to encourage the establishment of new undertakings in the industry. Now, you may be contending it is not high enough, that it ought to be higher, or that it is high enough now for that purpose. I don't know which, but this contention is made as of to-day that we seem to need some more industries in here.

MR. HEWARD: I think we do. I submit we have lots of people unemployed here who would be beneficially employed if we could establish these other industries, and I think another thing, my lord, from the point of view --

THE COMMISSIONER: We are not going outside the textile industry.

MR. HEWARD: No.

THE COMMISSIONER: You mean other factories.

MR. HEWARD: Other companies in the industry.

THE COMMISSIONER: I just want to make sure.

MR. HEWARD: I have always taken it for granted -- perhaps I have assumed too much -- that one of the objects, the prime motive and ultimate purpose of tariff protection was to encourage the establishment and development of an industry in the home country.

THE COMMISSIONER: Only insofar as it is better for that home country to have the industry than not to have it. The fact of having the industry, in itself, does not mean much to the country as a whole. It depends on what good that industry is doing to the country, to the community.

MR. HEWARD: Through employing labour and buying supplies.

THE COMMISSIONER: Yes.

MR. HEWARD: I thought that had been fully dealt with for the industry as a whole by my learned friend, Mr. Kellock. I was not going to deal with it.

THE COMMISSIONER: Well, that doesn't prevent you. I told you a while ago what I would like you to do.

MR. HEWARD: I will be glad to do it.

THE COMMISSIONER: Because you are speaking for one of the important factors in this industry.

MR. HEWARD: I will prepare on that point and discuss it later. My assumption was -- assuming that I am right, my lord, that one of the purposes of

protection is to encourage the establishment of an industry, and perhaps the reason why I am assuming that is that protection has been afforded, and is being afforded, to the cotton textile industry, and that has been the decision of the country over a term of years.

THE COMMISSIONER: I suppose among your other reasons now you might plausibly argue one of the reasons, among others, why this industry should continue to be protected is that of the vested rights, that you have grown up under protection.

MR. HEWARD: If we no longer needed protection I would not think we had a vested right to it.

THE COMMISSIONER: You are not saying that.

MR. HEWARD: I say we do need it.

THE COMMISSIONER: I say one of the reasons you no doubt would argue you should have it is because you have been induced to invest.

MR. HEWARD: We have been induced to invest, and have acquired an investment of considerable value, and if we are not protected that investment will be lost to us except as scrap. I have assumed that was one of the ultimate purposes of the tariff, to encourage any industry which it is protecting to expand and give more employment to the country, and buy more supplies, and the other advantages which the existence of an industry in any community, or country, implies.

THE COMMISSIONER: If it was as simple as all that all you have to do is impose a Customs Tariff which is a prohibition on the importation of all

textiles into the country, and you would have it.

MR. HEWARD: I don't think that would be healthy, my lord.

THE COMMISSIONER: This country has not done that yet.

MR. HEWARD: I don't think it would be healthy.

THE COMMISSIONER: It would get to the 100%, to what you seem to consider a desirable thing.

MR. HEWARD: No, I think to keep the existing companies healthy and efficient there must be the threat of new companies entering the field.

THE COMMISSIONER: If the importations of textiles were totally prohibited then you would have that 100% protection, and then you would have --

MR. HEWARD: I do not ask for that 100%.

THE COMMISSIONER: You would not then have that fear hanging over you.

MR. HEWARD: I do not ask for 100% protection that would entirely eliminate outside competition. I ask to be put on an equal footing, including in that, in the sense of an equal footing, the earning of a reasonable profit.

THE COMMISSIONER: Yes, I quite understand that.

MR. McRUER: Can you not keep the industry healthy by the threat of outside competition rather than by the threat of new industries coming into the field?

MR. HEWARD: Well, you have both with a properly levelled tariff.

anything into the country, and you would have it.

MR. MCGURN: I don't think that would be healthy, at first.

MR. [illegible]: [illegible]

MR. MCGURN: I don't think it would be healthy.

THE CONSULTANT: It would get to the 100%, to [illegible]

MR. MCGURN: No, I think to keep the existing companies healthy and efficient there must be the [illegible] of our [illegible] [illegible].

THE CONSULTANT: If the importations of textile were totally prohibited then you would have that 100% protection, and then you would have --

MR. MCGURN: I do not see for that 100%.

THE CONSULTANT: You would not then have that [illegible].

MR. MCGURN: I do not see for 100% protection that would entirely eliminate outside competition. I see to be put on an equal footing, including in that, in the sense of an equal footing, the earning of a reasonable profit.

THE CONSULTANT: Yes, I quite understand that.

MR. MCGURN: Can you not keep the industry healthy by the [illegible] of outside competition rather than by the threat of [illegible] coming into the [illegible]?

MR. [illegible]: [illegible]

[illegible]

MR. McMURTRY: If the tariff was low enough you would not have the threat of new industries coming into the field. They would say there isn't enough room in the field for us. You would have that healthy condition together with the healthful atmosphere from a little foreign competition.

MR. HEWARD: The question is whether it is healthier to have competition under those conditions from ourselves, or from somebody else. I do not mean "ourselves" in the sense of the industry, but from Canada, or somewhere else. So I do then submit, my lord, it is one of the ultimate purposes -- assuming that tariff protection -- let us put it this way, assuming that the country has decided that some kind of protection, that protection is necessary for the textile industry, that they want to have the textile industry here, that it is a good industry for the country; assuming that it is a good industry for the country then I say that the protection should be not only for those that are existing but should encourage the development of the industry in Canada. Why should those who are already here be granted the right, the sole right to the field? We do not ask that as far as tariff protection is concerned, and if I am right in that assumption --

THE COMMISSIONER: Apparently the founders of the Dominion Textile Company thought in their day there were too many in the field because they took steps to eliminate fourx, or got them together

MR. GARRETT: If the Hon. Mr. Conroy
would not have the threat of new industries coming
into the field. They would say there isn't enough
room in the field for us. We would more
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MR. HEALD: The question is whether it is
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from ourselves, or from somebody else. I do not mean
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assuming that tariff protection -- let us put it
this way, assuming that the country has decided
that some kind of protection, that protection is
necessary for the textile industry, that they want
to have the textile industry here, that it is a good
industry for the country; assuming that it is a good
industry for the country then I say that the
protection should be not only for those that are
existing but should encourage the development of
the industry in Canada. If I may, from the
already here be granted the right, the call right
to the field? We do not say that as far as tariff
protection is concerned, and if I am right in that
premise then --

THE CHAIRMAN: Generally the founders of
the Canadian textile industry in Canada
there were the only ones in the field because they had
been in Canada, or had had their factories

at that time.

MR. HEWARD: At that time they thought that the field was over occupied, the production was not reduced --

THE COMMISSIONER: One of the things you give, in talking of that company at its foundation, as an intangible is the doing away with excessive competition.

MR. HEWARD: Excessive competition, but you must remember, my lord, that the records show that production was not reduced in Canada.

THE COMMISSIONER: But you talk of excessive competition.

MR. HEWARD: Oh yes, excessive competition, and there can be an unhealthy competition which is bad for any industry, and therefore if the protection was put so high --

THE COMMISSIONER: And I have been told, too, it is bad for the consuming public.

MR. HEWARD: It is bad for the consuming public.

THE COMMISSIONER: If you are going to have a tariff so high that everybody would be coming in and building factories you are going to get into that position.

MR. HEWARD: Going to get into the position of multiplication of overheads and so forth.

THE COMMISSIONER: Certainly, that is a thing that has to be borne in mind.

MR. HEWARD: Then, I submit that just simply saying we are entitled to a fair return on our invest-

ment because we have hung on to our investment and it has increased does not mean we should not be entitled to a fair return on the value of the investment. Commission Counsel, in his own argument some time ago, contended that the rule adopted in regard to public utilities that the earnings should be considered in relation to the value of the investment should not be applied in determining whether or not the earnings of the tariff protected industry are reasonable --

THE COMMISSIONER: Are you reading that?

MR. HEWARD: In some notes I have. I just made a note. It was an oral contention of my learned friend.

THE COMMISSIONER: What is it?

MR. HEWARD: He contended that the rule adopted in regard to public utilities that earnings should be considered in relation to the value of the investment should not be applied in determining whether or not the earnings of a tariff protected industry are reasonable. His contention was that the public utility is giving a public service and that, on the other hand, the protected industry is given by the government a privilege.

THE COMMISSIONER: I think thought that it only gets that privilege in return for a service, real or supposed, which it is rendering to the country.

MR. HEWARD: That is what I was going to say.

THE COMMISSIONER: That is why I say you must show

must further be this long be in not inconsistent and
it had interested them, or have we should not be
entitled to a fair return on the value of the investment. Commission Counsel, in his own statement
[illegible], [illegible] which [illegible] is
regard to public utilities that the earnings should be
[illegible] in relation to the value of the investment
should not be applied in determining whether or not
the earnings of the tariff protected industry are
reasonable —

THE COMMISSIONER: Are you reading that?

MR. [illegible]: In some notes I have. I just made
a note. It was an good resolution of my [illegible]
[illegible].

THE COMMISSIONER: What is it?

MR. [illegible]: It extended that the rule applied
in regard to public utilities that earnings should be
considered in relation to the value of the investment
should not be applied in determining whether or
not the earnings of a tariff protected industry are
reasonable. The resolution was that the public
utility is giving a public service and that, on the
other hand, the protected industry is given by the
government a [illegible].

MR. [illegible]: I think [illegible] that it only
gets that privilege in return for a service, real
or [illegible], since it is [illegible] by [illegible].

MR. [illegible]: That is what I was going to say.

THE COMMISSIONER: That is the [illegible] you are [illegible]

what the service is.

MR. HEWARD: I submit that one of the services it renders is the very important service of providing employment in the country, and in another respect --

THE COMMISSIONER: I say that is always before it.

MR. HEWARD: And in another respect I think his contention is unsound in that it implies that the public utility is not being given any privilege. Public utilities are frequently the recipients of government privileges such as the exclusive right to use the street or highways, or rights to operate a monopoly in the district --

THE COMMISSIONER: They expropriate properties too.

MR. HEWARD: They have the right to expropriate properties. They are given very extensive privileges.

MR. McBURNEY: But you would not get your electric light if you did not have the public utility, but we would get our textiles if we did not have that tariff.

MR. HEWARD: Yes, but you might not get your employment if you didn't have the textile industry. All I say is one of the services which we are giving to the country is the supplying of employment, the furnishing of employment.

THE COMMISSIONER: Then it must appear that not only do you employ a certain number of men and women but that you employ them under fit and proper conditions and give them proper wages.

MR. HEWARD: Yes, my lord. In the case of our company my partner, Mr. Ballantyne, is going to address

MAY THE ANSWER BE.

MR. [illegible]: I should like one of the issues in
it matters is the very important matter of providing
employment in the country, and in another respect --

THE COMMISSIONER: I say that is always before it.

MR. [illegible]: Perhaps I should I think but
contradiction is unsound in that it implies that the
public utility is not being given any privilege. The
utilities are from nearly the representatives of governments
authorized such as the exclusive right to use the
streets or highways, or right to operate a monopoly
in the district? --

MR. [illegible]: They exercise exclusive
MR. [illegible]: They have the right to exercise
privileges. They are given very extensive privileges.

MR. [illegible]: Perhaps you would not get your electric
light if you did not have the public utility, but we
could get our breakfast if we did not have that tariff.

MR. [illegible]: Yes, but you might not get your
employment if you didn't have the textile industry.
All I say is one of the services which we are giving
to the country is the maintenance of employment, the
[illegible] of employment.

THE COMMISSIONER: When it must appear that not
only do you employ a certain number of men and women
but that you employ them under fair and proper con-
ditions and pay them [illegible].

MR. [illegible]: [illegible]

himself to that subject.

MR. McRUER: A public utility gives employment as well.

MR. HEWARD: Another advantage which the textile industry gives -- and I will develop this further at a later point -- is that it, in turn, provides a market. It buys a great many commodities, a great many supplies, power and coal and oil and equipment, and its factories are built. It uses railroads for its supplies, for its raw materials and for its finished product, and it pays taxes and adds to the exchequer of the country. Mr. Gordon has just supplied me with three and a half foolscap sheets of paper in which, closely typed, are the names of the various companies and suppliers in Canada from whom the company buys supplies and necessaries of all kinds.

THE COMMISSIONER: That is all to the good. You might make that part of --

MR. HEWARD: I see that the number of firm names is 507. I will have the thing totalled up.

THE COMMISSIONER: If later on you act on the suggestion I threw out to you, and show me reasons why you are performing a public service beginning with employment, and so on and so on, you can use that.

MR. HEWARD: I will address myself to that subject.

THE COMMISSIONER: You can just make that part of your argument.

MR. HEWARD: I will make that part of it because

it is not quite in final shape there. I will get the figures totalled.. So I say that distinction made by my learned friend, as between a public utility and a tariff protected industry, is not sound because I think that both of them render services and both of them have privileges given them in consideration of rendering that service.

Now, I do submit, however, that there is this distinction between them that -- and I am now at page 18 of my brief --

" In applying, however, to the matter of tariff protection the principles adopted in regard to earnings of public utilities, it must be remembered that a fair rate of return for a public utility would not necessarily be a fair rate for an undertaking engaged in an industry requiring protection, such as the textile industry. A public utility usually operates in a non-competitive market" such as a telephone company, a street railway company, an electric light company. They usually occupy a non-competitive market because they cannot both occupy the streets at the same time, and they cannot both put poles on them, and so forth.

"The textile manufacturer, however, must operate in a competitive market. In fact, one of the purposes of tariff protection", as I have said before I have assumed that one of the purposes is "to encourage the establishment of new undertakings in the industry and this creates domestic competition".

THE COMMISSIONER: Then, you see, your argument followed out logically would mean that all of you, you and your competitors must all get higher earnings just because you are competing with each other. That is, we cannot take one company and put it aside and say we will let it earn higher earnings because it has competitors.

MR. HEWARD: No, you are entitled to the earnings which are commensurate with the risk entailed in competitive industry; that is all I say. One of the risks in a protected industry is, of course, the same risk that was signallized in the bridge case, that this whole industry may be swept away if the protection is removed or reduced.

MR. McRUER: You have reached the limit of the circumference now.

MR. HEWARD: I don't think that is arguing in a circle.

THE COMMISSIONER: That is to say, Parliament to-day should give it to-day a very high rate of protection because another Parliament may lower it.

MR. HEWARD: That is ~~the~~ one of the unfortunate results of the protection, the changes in the tariff, and it is very hard to get capital invested in a protected industry because they don't know how long that capital will be protected. That is the situation looking at it from a practical point of view.

THE COMMISSIONER: I think probably what you mean is that there should be stability.

[illegible] Sir, you are, you [illegible] followed out logically would mean that all of you, you and your constituents must all get higher earnings and Canada [illegible] with some [illegible]. That is, we cannot take one economy and put it side and say we all. Let it earn higher earnings because it has competitors.

Mr. BENNETT: No, you are entitled to the earnings which are commensurate with the risks entailed in competitive industry; that is all I say. One of the [illegible] is a [illegible] is, of course, the [illegible] that has been eliminated in the [illegible] time. That [illegible] may be sought away if the [illegible] is secured or reduced.

Mr. [illegible]: [illegible] I don't think that is [illegible] is a single.

The CHAIRMAN: That is to say, [illegible] to-day should give it to-day a very high [illegible].

Mr. BENNETT: That is the one of the [illegible] results of the [illegible], the [illegible] is [illegible] and it is very hard to get equal [illegible] [illegible] [illegible] that equal will be produced. That is the [illegible] looking at it from a practical point of view.

The CHAIRMAN: I think [illegible] what you [illegible] is that there should be stability.

MR. HEWARD: Stability, that is all. I think there should be stability, a ratio of stability.

MR. McRUER: I can quite agree with my friend on that if it is stabilized at a sufficiently low level.

MR. HEWARD: I don't know what you mean by a low level. Perhaps your ideas may not coincide with mine or they may coincide as to what is a reasonable return. I say they should be stabilized at a level sufficient to give a reasonable return, and, as I pointed out in my brief --

"It is obvious that the existence of competition and the other hazards inherent in a manufacturing industry greatly increase the risks as compared with non-competitive public utilities. As the risks are greater than in the case of a public utility, the return on the value of the investment should therefore be higher."

I think that only follows along, that if I have a monopoly, if I am sure of my market, if I am sure of my market I do not need to be -- I am not subject to the same risks, and therefore I do not need as high returns.

MR. McRUER: Then, as far as those companies that are carrying on in Canada with a monopoly that would, in your opinion, apply to them.

MR. HEWARD: That are guaranteed a monopoly?

MR. McRUER: Well, that have a monopoly now. We have only one rayon yarn manufacturing company in Canada so their return should be lower than yours.

Mr. M.: Naturally, that is all. I think there should be availability, I mean of availability.

Mr. Smith: I can quite agree with my friends in that if it is conditioned at a sufficiently low level.

Mr. M.: I don't know what you mean by a low level. Change your ideas our not outside with this or they may contribute so that is a reason for review. I say they should be conditioned at a level sufficient to give a reasonable profit, as I pointed out in my brief --

"It is obvious that the exercise of conditions on the other hand inherent in a monopolistic industry generally increase the prices or improve the profit-earning utilities public utilities. So the thing one gives over then is the loss of a public utility. The return on the value of the investment is generally a minimum.

I think that that defines what, I'm if I have a monopoly, if I am some of, a stock, if I am more or my market I do not need to be -- I am not subject to the same risks, so therefore I do not need as high a return.

Mr. Smith: Then, as for the other regulations that are carrying on in Canada with - respectively that would, in your opinion, apply to them.

Mr. M.: Not but recommend a company

Mr. Smith: Not but I mean

We have only one major gas manufacturing company in Canada so their income should be some thirty years.

MR. HEWARD: If it is guaranteed a monopoly?

MR. McRUER: We haven't guaranteed it.

MR. HEWARD: I don't see just because they happen to be there -- when I say that a public utility has a monopoly I mean it has a guaranteed monopoly. There is nothing to prevent some other company than Courtaulds coming in and manufacturing viscose yarns, or some other company than Celanese coming in and manufacturing Celanese yarns, if there is sufficient inducement to them to do so.

MR. McRUER: If you get the tariff low enough they won't want to do it and then they would have a monopoly and they could get along on a lower price, a lower return.

THE COMMISSIONER: We will take a few moments.

-- The Commission adjourned for a short recess.

-- On Resuming.

MR. HEWARD: Now,

> "In examining from the point of view of tariff protection into the earnings and investment of an industry already established I submit the earnings of that industry in the immediate past and at the time of examination and the probable earnings in the near future must be considered in relation to the value of the investment at the time of investigation."

That is one reason why I picked out in all these statements the last ten years. I thought it was a very fair period to pick out. It is the comparatively recent past, and it is a representative past in that

MR. MACKAY: If it is guaranteed a monopoly?

MR. MORTON: We haven't guaranteed it.

MR. MACKAY: I don't see just because they happen to be there — when I say that a public utility has a monopoly I mean it has a guaranteed monopoly. There is nothing to prevent some other company than Consolidate coming in and manufacturing viscose yarns, or some other company when Celanese coming in and manufacturing Celanese yarns, if there is sufficient inducement to them to do so.

MR. MACKAY: If you put the tariff low enough they won't want to do it and then they would have a monopoly and they could put along on a lower price, a lower return.

THE CHAIRMAN: We will take a few moments.

— The commission adjourned for a short recess.

— on resuming.

MR. [illegible]:

In considering from the point of view of land development into the province an investment of an industry already established I consider the economics of that industry in the province and at the time of examination and the economic earnings in the near future need to be considered in relation to the value of the investment at the time of investigation.

That is one reason why I picked out the six years subsequent the last ten years. I consider it was a very fair period to pick out. It is the company's recent cost, and it is a representative part in that

it contains partly a good period and partly the lean years. I submit--

"It is obvious that it is the present value of the investment in a public service or in an industry which should be considered and not the cost thereof, when it is remembered that a rule must work both ways. If for instance, owing to mistakes in judgment or to market conditions or other causes, the value of a property representing an investment in a public service whose rates are to be established, or in an industry whose tariff protection is to be fixed, was worth less than that property cost at the outset, the company would not be entitled to a rate nor the industry to tariff protection based on the original cost."

In other words, as the cases which I have recited in regard to public utilities have pointed out, the utility must suffer from a loss, a permanent loss in values and is entitled to the benefit of a permanent rise in values. I submit it is a similar situation in regard to protection of an industry because that is what a company -- assuming that the industry is one which the country wants to protect and wants to encourage -- then that is what would have to be paid for any necessary new plant and equipment which was to be installed at the time of determination. At the present time, for instance, assuming -- and I am now assuming that the country

it contains partly a good period and partly the lean years. I submit--

"It is obvious that it is the present value of the investment in a public service or in an industry which should be considered and not the cost thereof, when it is recommended that a rate should be set.

Owing to failures in judgment or to market conditions or other causes, the value of a property representing an investment in a public service whose rates are to be established, or in an industry whose tariff protection is to be fixed, may seem less than the amount paid to the owner, the company would not be entitled to a rate for the industry to benefit protection based on the original cost."

In other words, on the basis which I have recited in regard to public utilities have planned out, the utility must suffer from a loss, a permanent loss in values and is entitled to the benefit of a commercial value in values. I submit it is a limited situation is treated to protection of an industry because such is value a [illegible] industry is one which the country needs to conduct and needs to encourage -- then that industry should have to be paid for any unnecessary plant and equipment which was to be installed at the time of establishment. [illegible] accounting -- and I do not see why that accounting

has decided that tariff protection for the textile industry is desirable, and that it wants -- and that one of the purposes of that protection is to encourage the establishment and the development of that industry in Canada, not allow it to be static but to be progressive, then I say the value of what it would cost to acquire the necessary additional plant for proper expansion is an important element, and you have to apply that not only to the existing part of the industry -- not only to the part of the industry which is being installed at the time of the increase, the increased part, but also to the existing part of the industry; that is, the companies or persons engaged in the protected industry who are fortunate enough to have acquired the property many years ago at a value less than it is to-day are entitled to a reasonable return on the value of the investment as it is to-day. That is my contention, assuming that it is the desired policy of the country to protect that industry.

(page 17610 follows)

has decided that tariff protection for the textile industry is desirable, and that it wants -- and that one of the purposes of that protection is to encourage the establishment and the development of that industry in Canada, not that it is to be static but to be progressive, then I say the value of what it would cost to establish the necessary additional plant for power generation is an important element, and you have to apply that not only to the existing part of the industry -- not only to the part of the industry which is being installed at the time of the increase, the increased part, but also to the existing part of the industry; that is, the expenses or payments charged to the protected industry who are fortunate enough to have acquired the property long years ago at a value less than it is to-day are entitled to a reasonable return on the value of the investment as it is to-day.

That is my contention, namely, that it is the general policy of the country to protect that industry

(page 1788½ follows)

And now I submit, my lord, that it is immaterial whether the value of the property representing the investment may have been increased beyond its original value by earnings plowed back into the business or by natural increases in the value of such assets, or by both.

Dealing first with earnings plowed back into the business I submit that these should be included in computing the value of the investment. If, instead of reinvesting these earnings the company had distributed them to the shareholders and had then added to the assets of the Company by the expenditure of an equivalent amount of money acquired by the issue of additional securities, the value given by such expenditure must of course be included in ascertaining the value of the company's assets. There is no sound reason for distinguishing between moneys obtained from outside subscribers and those obtained by withholding themfrom the shareholders. When I say "withholding them" I mean withholding them in the sense that they have been plowed back and now as I said, my lord, here:

> "Even if excessive earnings in the past had been plowed back into the value of the property ....."

And I submit in the case of my clients, the Dominion Textile Company,

and now I submit, my lord, that it is immaterial whether the value of the property representing the investment may have been increased beyond its original value by earnings placed back into the business or by natural increases in the value of such assets, or by both.

Dealing first with earnings placed back into the business I submit that there should be included in computing the value of the investment, (1) losses of revenue-bearing assets which the company had sustained when so did [illegible] to the assets of the Company by the expenditure of an equivalent amount of money, supplied by the issue of additional securities, the value given by such expenditure must of course be included in ascertaining the value of the corporate assets. There is no sound reason for distinguishing between earnings expended on additions substituted and those contained by reconstructing therefrom the amortization. When I say "substituting" I mean replacing them in the sense that they have been placed back and as I said, my lord,

"Even if excessive earnings in the past had been placed back into the value of the property ....."

And I submit in the case of my clients, the Dominion Textile Company,

"...the record shows clearly that the earnings have not been excessive - a point which will be discussed more fully at a latef part of this Factum - these earnings should not be excluded in determining the value of the investment. Tariff making is not a question of rewarding or punishing former investors in the industry for their administration. It is intended to permit and procure the establishment, continuation and development of industry and to give employment, and this logically and properly involves a reasonable return on the value of the investment as it exists at the time of termination."

Now, my friend Mr. McRuer, at page 180 of his Brief and in his argument has contended that a large part of the invested capital is not capital invested by investors but capital which has been invested by consumers, this being the term by which my friend seeks to describe the earnings which have been left in the business, and he contends that the earnings so left in the business and added to the capital should not be allowed to earn any further revenue for the industry. Now, at first I thought from some of my friends' statements that he meant that any earnings which were not distributed to the shareholders but are left in the business, whether they be part of a reasonable return on the investment or not, should be considered as invested by the consumers, and

"...the record shows clearly that the earnings have not been excessive - a point which will be discussed more fully as a later part of this section - these earnings should not be excluded in determining the value of the investment. Tariff making is not a question of rewarding or punishing former investors in the industry in their endeavours. It is intended to permit and procure the development, conservation and development of industry and to give encouragement, and this logically and strongly involves a reasonable return on the value of the investment as it exists at the time of consideration."

Now, my friend Mr. Gardner, as page 146 of his brief and in his statement has contended that a large part of the invested capital is not an actual investment, investment but capital which has been invested by commerce, this being the term by which my friend seems to describe the earnings which have been left in the business, and he argues that the earnings so left in the business had added to the capital and not be allowed to earn any further revenue for the industry. Now, at first I thought from some of my friends' statements that he meant that any earnings which were not distributed to the shareholders but are left in the business, whether they is part of a reasonable return on the investment or not, should be considered as invested by the consumers, and

therefore not entitled to earn anything for the investor but that has proved not to be the case because it has now been made clear during the course of Mr. Kellock's argument that my friend Mr. McRuer did not intend to make that contention but that he had reference only to earnings in excess of a reasonable return which had been left in the business.

MR. McRUER: I said that in my brief.

MR. HEWARD: Well, I thought you had in the brief and then when the argument started I thought you meant something else, but then we cleared that up and I think we understand one another on that now.

"It is submitted....."

MR. McRUER: At page 117 of my brief I made it quite clear at the opening of this paragraph.

MR. HEWARD: I think it is quite cleared up now. Mr. Kellock and you discussed that at some considerable length and I think it is made quite clear my friend only intends to refer to earnings in excess of a reasonable return.

Now, I submit my lord, ---

THE COMMISSIONER: Nobody has yet been able to find very accurately what a reasonable return is.

MR. HEWARD: That is one of the points- I---

MR. McRUER: According to my objection, right or wrong, the investors in this Company have received 98.4% on the money that they invested.

THE COMMISSIONER: You mean the original investors?

therefore not entitled to earn anything for the invent but that has proved not to be the case because it has been made clear during the course of Mr. Hallock's argument that my friend Mr. Hooper did not intend to make that contention but that he had reference only to savings in excess of a reasonable return which had been left in the business.

MR. McMURRAY: I said that in my brief.

MR. HOOPER: Well, I thought you had in the brief and then when the argument started I thought you meant something else, but then we cleared that up and I think we understand one another on that now.

"It is evident....."

MR. McMURRAY: At page 117 of my brief I make it quite clear at the opening of this paragraph.

MR. HOOPER: I think it is quite cleared up now. Mr. Hallock and you discussed that at some considerable length and I think it is made quite clear by Friend only intends to refer to savings in excess of a reasonable return.

Now, I would ask that ---

THE COMMISSIONER: Nobody has yet been able to find very succinctly what a reasonable return is.

MR. HOOPER: That is one of the points- I---

MR. McMURRAY: According to my objection, right or wrong, the inventors in this Company have received [illegible] for their inventions.

THE COMMISSIONER: You mean [illegible]

MR. McRUER: Yes, and therefore anything that was plowed back into the business, while we cannot be called upon to say what is actually a reasonable or unreasonable return, - it is not hard to decide - I would think that 98.4%---

MR. HEWARD: I challenge most emphatically my friend's argument that this Company has earned anything like 98% on its investments, and I am going to deal with it at considerable length shortly.

THE COMMISSIONER: Now, he does not say this company earned, he says these original investors earned.

MR. HEWARD: My lord, I think the point is not what any particular person earned.

THE COMMISSIONER: That is another fact.

MR. HEWARD: I am going to challenge that argument.

MR. COMMISSIONER: We had one of them in the box in Montreal, Sir Herbert Holt, and Mr. McRuer says that he and his associates, original investors, did earn an average of 98%, and you say that is not right.

MR. HEWARD: It may be right, for the actual cash these gentlemen put up they did earn, or some of them, if they have held on to their shares.

THE COMMISSIONER: Did not Sir Herbert Holt say that he had held on to them?

MR. HEWARD: Sir Herbert Holt said that he had held on to most of them or given them to his family

Mr. [illegible]: Yes, but throughout [illegible] allowed back into the business, while we cannot be called upon to say what is actually a reasonable or unreasonable reason, - it is not hard to decide - I would think that Mr. [illegible]---

Mr. [illegible]: I challenge most emphatically Mr. [illegible]'s argument that only [illegible] are called upon to decide on its investments, and I am going to deal with it at a considerable length shortly.

The [illegible]: Yes, he does not say this company earned, he says these original investors earned.

Mr. [illegible]: My lord, I think one point is not that any particular person earned.

The [illegible]: That is another fact.

Mr. [illegible]: I am going to challenge that argument.

Mr. [illegible]: [illegible] of them in the [illegible] in Montreal, Sir Herbert Ball, and Mr. Hodder says that he and his associates, original investors, did earn an average of 85%, and you say that is not right.

Mr. [illegible]: It may be right, for the actual cash these gentlemen put up they did earn, or some of them, if they have held on to their shares.

The [illegible]: Did not Sir Herbert Ball say that he had held on to them?

Mr. [illegible]: My lordship [illegible] Mr. [illegible] said he had [illegible] in [illegible] generally

but I do not think what the Syndicate or any of its members may have earned by this transaction they entered into has any bearing on the matters which are the subject of this inquiry here.

THE COMMISSIONER: That is another point.

MR. HEWARD: That is where I challenge my friend. I do not think it has any bearing. My point is what return has this company made - first o f all, what was got for the original issue of these shares and those that were issued later and its bonds, and that is one way of looking at it, and the more scientific way - what it got from the value of its investment. I submit that is the other way, and not what any particular shareholder may have made. Take, for instance, the man who is fortunate enough during the depression and perhaps willing to take a chance which a good many people during the depression were not willing to take and bought the stock of the Dominion Textile Company Limited, at 39, which was the low point in the depression I understand.

THE COMMISSIONER: What is it to-day?

MR. HEWARD: 80, my lord.

MR. McRUER: It has gone up since the reduction of the tariff.

MR. HEWARD: It took a slant off, I know. It slanted off to 76 and came back to 80. The point is this that a man who bought it at 39 would have an investment to-day on which he would be receiving

dividends at the rate of practically 10% on his original investment and in addition to that, if there was anything that was not being distributed in dividends, his shares would be yielding a return on the amount that he paid for them perhaps considerably in excess - supposing that there was 10% made on the value of the Company's assets and 5% was distributed, half of it, that man would be getting distributed to him in dividends to-day a little over 10% on the investment he made in 1933 - I think that was the low point - and also would be getting 10% plowed back to him for the industry.

MR. McRUER: He did not invest in the Company. What one shareholder sells to another for has no relation to the investment in the company and earning any money that was invested by shareholder.

MR. HEWARD: I think what we have to look at - first of all, what has the Company made on what it purchased, on the assets it acquired, both at the outset and since, and also on the value of the investment where that is different from the original cost that was put into it. So I do challenge my friend's statement when he says that what any person who might buy - for instance, as the Syndicate did, buying these assets from the constituent shareholders and turning them over to the Company, I do not think that has the slightest bearing or is any way material to this Inquiry, and I submit that it has been shown

dividends at the rate of probably 10% on the original investment and in addition to that, if there was anything that was not being distributed in dividends, big salaries could be [illegible] - [illegible] amount that is paid for them perhaps generally speaking - supposing that there was 10% made on the value of the Company's assets and he was [illegible] half of it, what can really be [illegible] but in dividends to-day a little over 10% on the investment he gets in 1942 - I think that was the best year - and also really he [illegible] to mine for the industry.

Mr. [illegible]: Do [illegible] Board or the Company, that not necessarily will be [illegible] addition to the investment in the company and certain [illegible] are [illegible] by [illegible].

Mr. [illegible]: I think that we have to look at - first of all, what has the Company made on what it [illegible], on the assets it acquired, both at the [illegible] and also on the value of the investment there that is different from the original cost that was put into it. So I do [illegible] my friend's statement when he says that [illegible] so might say - for instance, as the [illegible] buying these assets from the [illegible] and turning them over to the Company, I do not think that has the slightest bearing or is any [illegible] to this inquiry, and I submit that it was [illegible]

by Exhibit 1232 and by these other exhibits which I produced to-day, 1356 and 1357, that the return on the investment at cost to the Company and the return on the value of the investment, which I am going to elaborate on in a few moments - because I have those figures also in these exhibits - has been anything but excessive. So that I say the question of whether the value of the investment has been built up by excessive earnings plowed back in the past is purely theoretical so far as this company is concerned. I do submit it is not the purpose of a customs tariff to punish previous investors or to reward them for what they have done in the past, perhaps under very different tariffs, but it is entirely proper to include to-day, when we are determining whether the tariff protection is adequate at this time, to include excessive earnings which have been plowed back, if they have been plowed back.

In connection with plowing back of earnings I submit that, in view of industrial conditions in this country and countries similarly placed, a fair and reasonable return to industry must be sufficient to permit a part of that return being left in the business.

MR. McRUER: I agree with that.

MR. HEWARD: I think that that is a fair statement.

THE COMMISSIONER: That is to say, you must pay what you call a fair dividend and then something left

by Exhibit 1882 and by these other exhibits which I produced to-day, 1885 and 1887, that the return on the investment at cost to the Company and the return on the value of the investment, which I am going to elaborate on in a few moments - because I have these figures also in these exhibits - has been varying but excessive. So that I say the question of whether the value of the investment has been built up by excessive earnings plowed back in the past is purely theoretical so far as this company is concerned. I do submit it is not the purpose of a cautious tariff to punish previous investors or to reward them for what they have done in the past, perhaps under very different tariffs, but it is entirely proper to include to-day, when we are determining whether the tariff protection is responsible at this time, to include excessive earnings which have been plowed back, if they have been plowed back.

In connection with plowing back or earnings I submit that, in view of industrial conditions in this country and countries similarly placed, a fair and reasonable return to industry must be sufficient to permit a part of that return being left in the business.

MR. MOWAT: I agree with that.

MR. [illegible]: Fair enough.

MR. [illegible]: [illegible]

over.

MR. HEWARD: Something to plow back, and that is particularly the case in an agricultural country.

MR. McRUER: I do notquarrel with that.

MR. HEWARD: There is an old business maxim - I heard it a good many years and I do not think it is at all sacred - that earnings should be distributed a dollar for dividend and a dollar for plant, and that is the way they put it, and I do not think that is intended even to be exact, but I do contend that a manufacturing industry to-day in Canada or any other country similarly placed should so design its operations that part of its income can be left in for expansion of the business or for provision against periods of serious depression.

MR. McRUER: I entirely agree with my friend.

THE COMMISSIONER: That does not clear up the question of reasonable---

MR. HEWARD: No, my lord, and I am going ---

THE COMMISSIONER: It has to do with their distribution, which is another thing.

MR. HEWARD: That is a business principle which has been adopted for many years by prudent administrators in business generally. I think we would look upon any business administrator that distributed every cent of his profits in every year ---

THE COMMISSIONER: It is like a man's eeincome, saving part of his income. If you put it back into the business you add to the capital value of your

MR. EDWARD: Something to plow back, and that is particularly the case in an agricultural country.

MR. MORRIS: I do not quarrel with that.

MR. EDWARD: There is an old Saskatchewan saying - I heard it a good many years and I do not think it is at all sacred - that earnings should be distributed a dollar for dividend and a dollar for plant, and then one may play it, and I do not think that is too even to be exact, but I do believe that [illegible] should be left in order to provide more jobs, income can be left in for expansion of the business or for provision against periods of unemployment.

MR. MORRIS: I entirely agree with my friend.

MR. CHAIRMAN: Just come not clear on the question of remuneration---

MR. [illegible]: Is it left, and is also ---

THE CHAIRMAN: It has to do with a [illegible] distribution, which is another [illegible].

MR. EDWARD: There is a business principle which has been accepted for many years by prudent capitalists in business generally. I think we would look upon any [illegible] that [illegible] cent of his profits in every year ---

THE CHAIRMAN: It is like a man's salaries, saving part of his income. If you put it back into the business you add to the capital value of your

holdings.

MR. McRUER: If it is a good business it is more profitable to have it in there than to take it out.

MR. HEWARD: I think any person who distributes 100% of his profits every year, I mean profits even after distribution, would be looked upon as a spend-thrift administrator.

Now, I should point out here that it is not pointed out to the Commission what is a reasonable return on an investment.

THE COMMISSIONER: Is this in your Factum?

MR. HEWARD: No, my lord. What is a reasonable return on an investment in an industry such as the Textile Industry? In one instance Commission Counsel speaking hypothetically purely - and I do not intend to fasten it on to him - said took 10% as a reasonable return on investment.

MR. McRUER: On my calculation on Dominion Textile I allow 20%.

MR. HEWARD: I know you did. I was taking your own figure - you took 10% - and I should point out that in the average annual return on the capital invested in the Dominion Textile has throughout the Company's history been less than 10%. That is my submission very very emphatically, and the average return on the value of the investment for the past 10 years has been very much less than that, and I am going to give you the figures in a moment.

building.

MR. MORLEY: If it is a good business it is more profitable to have it in the - then to have it out.

MR. MORLEY: I think any person who looks at the profits every year, I mean profits even after distribution, would be looked upon as a speculator.

Now, I should point out here that it is not - out to his Commission that is a reasonable return on investment.

THE COMMISSIONER: In this in your Province?

MR. MORLEY: No, my Lord. That is a reasonable return on an investment in an industry such as the textile industry? In the textile operations - normal operating systematically purely - and I do not intend to - when it on - will know it - a reasonable return on investment.

MR. [illegible]: In a calculation [illegible] I allow 10%.

MR. [illegible]: I know you do. I was asking you - you know - and I should point out that in the average annual return on the capital invested in the textile industry over the Province's history been less than 10%. That is my submission very very emphatically, and the average return on the value of the investment for the last 10 years has been very much less than that, and I am [illegible] Figures is a [illegible].

MR. McRUER: My calculation of 10% was on the money invested by an investor.

MR. HEWARD: Purely the money you have made it on. That is where I take issue with you, Mr. McRuer, Then here I think it is perhaps appropriate to take up another proposition in regard to earnings which appears in the introduction of part 4 of my friend's Brief at page 116. He warns us that it is not to be taken that what is said in the Brief has any relation whatever to the measure of the profits that it is proper for industrialists to make out of production in Canada but that all the observations in the Brief are directed solely to profits made in industries that have received at the hands of the Government special privileges which are in the nature of a right to levy taxes on the consumers of Canada for the particular benefit of the industry in question. I submit that this approach to the subject, my lord, is unsound.

MR. McRUER: You mean that a department store or a retail store, for instance, who operates in absolutely free competition should have the same scrutiny of its profits as a tariff protected industry?

MR. HEWARD: I do not think that you could compare a retail store with a manufacturing industry but let us take manufacturing industries generally.

THE COMMISSIONER: I think in order to test the soundness of Mr. McRuer's proposition you should take a manufacturing industry which has no tariff protection,

Mr. Bennett: Surely the money you have made it so. That is where I have issue with you, Mr. Speaker, that here I think it is quite a appropriate to take up another proposition in regard to earnings which appear in the introduction of part 4 of my friends great as they lie. He seems as that it is not so to know what is said in the brief has any relation matter to the records of the profits that it is proper for industrialists to make out of production in Canada but when all the observations in the brief are directed solely to profits made in industries that have received at the hands of the Government special privileges which are in the nature of a right to levy taxes on the consumers of Canada for the particular benefit of the industry in question. I submit that this question to be subject, my lord, is unusual.

Mr. Mackenzie: You mean that a government whose or a public service, for instance, who operates in exclusively free competition should have the same rate of profit as a partly protected industry?

Mr. McBride: I do not think that you could compare a public service with a manufacturing industry but let me have the opportunity of [illegible].

Mr. Mackenzie: I want in order to test the [illegible], Mr. Speaker, [illegible] a manufacturing industry which has no public [illegible]

if there are any such

MR. HEWARD: Yes, and I say that approach to the subject is not correct. I do not think you can compare for any purposes that would be useful to this Commission the return on a retail industry with a manufacturing industry, for in tance, even though both were protected. But where I submit the approach to the subject is fallacious or is unsound, it assumes that industry which operates under protection of a customs tariff is entitled to earn less than industry generally, and I say this is unsound.

THE COMMISSIONER: I suppose that an industr that has no tariff protection at all could pretty well do as it likes so long as it obeys the law, the criminal code, Combines Act.

MR. HEWARD: It is not a question of whether we can punish or anything - it is a question of what is reasonable, what we consider reasonable from the point of view of the consumer, what is a reasonable return.

THE COMMISSIONER: A reasonable return has application on the question of what use are you making of your protection. Are you making an undue use of it?

MR. McRUER: That is my point because I say frankly I personally have an abhorrence of government attempting to regulate people in their ordinary use of contact

If there is any case

Mr. Gilbert: Sir, even if one did suppose the subject is not correct. I do not think you can compare for any purpose that would be useful to this Committee the present in a fairly [illegible] manufacturing industry, for its terms, even though both were protected. But (that I admit the approach to the subject is ridiculous or is assumed) it assumes that industry which operates under protection of a customs tariff is entitled to some less keen industry generally, and I say this is a mistake.

The [illegible]: I suppose that an industry that has no tariff protection at all could prove well do so if it lives so long as it obeys the law, the criminal code, combines act.

Mr. Bryant: It is not a question of reason on judgment or anything - it is a question of [illegible] reasonable, what is consider reasonable from the point of view of the consumer, what is a reasonable price.

[illegible] application on the question of what are you making of your protection. Are you making an undue use of it?

Mr. [illegible]: [illegible]

and if a person asking nothing from the Government makes a lot of profit on their business, that is their own business. On the other hand, if an industry does ask something from the government then the government has something to say about the quantum of privileges that they give to them.

THE COMMISSIONER: That is very pertinent to this Inquiry.

MR. McRUER: That is the distinction I was wishing to draw - that there is a lot said about it generally and loosely about - this ought to be prevented, profits of this kind ought to be prevented, and profits of another kind ought to be prevented. All I do say was that so far as that sort of thing went I was against any government interference in it but when a Government grants certain privileges in order to assure you to make profits, then the government has got some reason to say what quantum of privilege they will give you, and that must be determined by the analyses of the profits, and we are agreed on that because you say that is a proper analysis to make.

MR. HEWARD: I say returns should be reasonable, aside from any government interference or anything. You cannot stop an unprotected industry from making an unreasonable return but, of course, that would probably cure itself because other industries would come in. There are unprotected industries here such as the Pulp and Paper, newsprint, which are unprotected,

and if a person making nothing from the government makes a lot of profit on their business, that is their own business. On the other hand, if an industry does not come being from the government then the government has something to say about the quantum of privileges that they give to them.

The Chairman: That is very pertinent to this question.

Mr. McKim: That is the conclusion I was working to drum - that there is a lot said about it generally and loosely about - this seems to be prevented, profits of this kind ought to be prevented, and profits of another kind ought to be prevented. All I do say was that so far as that part of thing went I was against any government interference in it but when a government grants certain privileges in order to make you to make profits, then the government has got some reason to say what quantum of privileges they will give you, and that must be determined by the analyses of the profits, and we are agreed on that because you say that is a proper principle to make.

Mr. McKim: I say returns should be reasonable, aside from any government interference or anything. You cannot stop an unprotected industry from making an unreasonable return but, of course, that would possibly cure itself because other industries would come in. There are unprotected industries here such as the pulp and paper, newsprint, which are unprotected

as I understand it, here, but there must be a point at which the returns for even an unprotected industry is unreasonable and must be getting too much out of the consumer.

THE COMMISSIONER: Well, take a man who grows apples and he sells his apples at any price he likes. Whose business is that so long as he does not enter into a combination with other apple growers to unduly enhance prices, breaking some law.

MR. HEWARD: Here is where I think the fallacy exists ---.

THE COMMISSIONER: But if applegrowing was protected - as a matter of fact it is. Perhaps I gave a wrong example, because the apple industry does enjoy a certain measure of protection. But if any industry is ~~un~~protected, it would be a mis-use of its protection if it unduly enhanced the price of those articles and that would be reflected in its earnings.

MR. HEWARD: Even I think from a moral point of view that if a person is making an unfair profit, and unreasonable profit, even if he is not protected, that profit is unreasonable---

THE COMMISSIONER: Oh well, from a moral point of view of course, but we are talking here ---

MR. HEWARD: So that we have got to find out what is meant by a reasonable return to a protected industry and I do not think that it can be any differnt

as I understand it, here, not there must be a point at which the returns for even an unprotected industry is unreasonable and must be setting the back on the consumer.

[illegible] will, [illegible] people and he sells his supplies at any price he likes. Those business is bad so long as he does not enter into a combination with other people generally and fix prices, under my view law.

Mr. [illegible]: Here is there a point at the time [illegible] ---

Mr. CONNELL: But if competition was protected - as a matter of fact it is. Because it is a very simple, because the single industry does enjoy a certain measure of protection. If any industry is unprotected, it would be a mis-use of its protection if it unduly enhanced the price of those articles and that would be reflected in its earnings.

Mr. [illegible]: Even I think from a moral point of view that if a person is making an unduly profit, and unreasonable profit, even if he is not protected, [illegible] ---

[illegible] view of course, but we are talking here ---

Mr. MEIGHEN: We then we have got to find out what is meant by a reasonable return to a protected industry and I do not think that it can be any uniform

from a reasonable return in industry generally.

THE COMMISSIONER: The whole thing is this, you see, then, that you are enabled by the tariff to ask the Canadian consumer for a higher price for any commodity than he would have to pay under a system of free trade, and if you are asking a higher price then you are carrying on your business adquately profitable, at a reasonable return. You are back again to what is a reasonable return. If you had no tariff protection at all you were in open competition with the whole world - Japan and Great Britain and the United States,- why, it would not be much of any body's business what your return was unless you broke some law.

MR. HEWARD: It might not be in the way of stopping it although I believe ---

THE COMMISSIONER: Well, you could always legislate and the legislatures has provided against combines, for instance.

MR. HEWARD: And the situation is this: If you say to a person proposing to invest in ---

THE COMMISSIONER: You see, supposing we say that a tariff 30% ad valorem in favour of a certain industry that you can earn a return of 20% on your investment and that is not reasonable - these figures do not mean anything - and a tariff of 20% would hold you down so that you would earn about 10%, and that is reasonable, The result would be a tariff of 20%. I think it is only from that point of view you have any

from a reasonable return in industry generally.

THE COMMISSIONER: The whole thing is this, you see, that you are enabled by the tariff to ask the Canadian consumer for a higher price for any commodity than he would have to pay under a system of free trade, and if you are asking a higher price when you are carrying on your business at a fairly profitable, at a reasonable rate. You are back again to what is a reasonable return. If you had no tariff protection at all you were in open competition with the world - Japan and Great Britain and the United States - why, it would not be much of any body's business what your profits was unless you broke even.

MR. [illegible]: It might not be in the way of [illegible] it although I believe ---

THE COMMISSIONER: Well, you could always [illegible] and the legislature has provided [illegible]

MR. [illegible]: and the situation is [illegible] any to a person proceeding to invest [illegible]

THE COMMISSIONER: You see, supposing [illegible] a tariff 30% ad valorem in favour of [illegible] that you can earn a return of 30% on your investment and that is not reasonable - those figures do not [illegible] - and a tariff of 30% would put [illegible] so that you could earn about 10%, and that is reasonable. The result would be a tariff of 20%. I think it is only from that point of view you have any

concern at all.

MR. HEWARD: I think it must be taken in relation to industry generally, for this reason: Suppose I come along and want to put my money into a tariff protected industry and I find what is regarded as a reasonable return for a tariff protected industry would be less than a reasonable return in industry generally. Then I certainly would not put my money into it, I would put it into industry generally. So that one of the objects of tariff protection would be defeated, namely, the establishment or encouragement of that industry in Canada. That is the point I am making, and I say if you are going to state to the man who is putting his money into a tariff protected industry - you cannot receive as much as industry generally with commensurate risks would receive as a reasonable return, which would be reasonable for a return on industry generally, you have to take what is less than reasonable generally, then the corollary it seems to me, in order to induce him to invest, you have to guarantee him minimum return.

MR. McRUER: I think you misunderstood entirely what I am putting forward. I am not putting forward that you should receive less than a reasonable return. My case was that you should receive not more than a reasonable return.

MR. HEWARD: You say it has no bearing on what is a reasonable return on industry generally?

[illegible]

[illegible] of USA.

Mr. [illegible]: I think it must be taken in relation to industrial security, for this reason. Suppose I come along and want to put my money into a tariff protected industry and I find what is regarded as a reasonable return for a tariff protected industry would be less than a reasonable return in industry generally, then I certainly would not put my money into it. I would put it into industry generally. So that one of the objects of tariff protection would be defeated, namely, the establishment or encouragement of that industry in Canada. That is the point I am making, and I say if you are going to stare to the man who is putting his money into a tariff protected industry - you cannot provide a rate in industry generally with commensurate gains would receive as a reasonable return, which would be reasonable for a return on industry generally, you have to take what is less than reasonable generally, then the corollary it seems to me, in order to induce him to invest, you have to guarantee him [illegible].

Mr. [illegible]: I think you misunderstood entirely what I am driving forward. I am not putting forward [illegible]. My case was that you should receive not more than a [illegible].

Mr. [illegible]: [illegible]

THE COMMISSIONER: We always get back to that point- the whole question is what is a reasonable return?

MR. McRUER: And I am more in a position to say that these earnings are more than a reasonable return under the tariff protection they have, without defining what a reasonable return is.

MR. HEWARD: I submit my figures, taken from any point of view, they are reasonable. The point is this, that I do feel that it is not an unsound approach to say that we accept less than a man is reasonably entitled to take out of the consumers in a industry generally because that is discrediting investment in the protected industry.

THE COMMISSIONER: You say about discrediting investment, once these industries do come under a reason for investigation, then their investments are called into question. You have already had it used about the flotation of stock etc. how far can they go on issuing stock and then have those who buy that stock, - it is fallacious to say they expect to earn 10% or 6%.

MR. HEWARD: The question you put up to me, my lord, seems to be another reason for saying that it is the actual value of the investment, the value lying behind the investment which counts - not how much stock is outstanding, not how many shares, not how many bonds but what is the value behind the investment.

MR. McRUER: Mr. Kellock put it the other way - what does the shareholder get out of it.

MR. HEWARD: This is my submission and I have thought it out.

THE COMMISSIONER: You say get back to the actual value.

MR. HEWARD: The actual value of the investment, does not matter how many shares are out.

MR. McRUER: You won't concede, though, you have to take into consideration how the value of that investment was built up under a customs tariff.

MR. HEWARD: Not for the present determination. I say even if excessive earnings plowed back in the past you are not punishing the past administrators, you are trying to find out what is proper return on the value of the investment as it exists to-day and give it tariff protection which under good management should yield a reasonable return on that investment.

I submit this too, my lord, that the safeguard to the government and the consumer in granting protection on this basis is that if an industry under the protection granted to it earns more than a fair return, more than what is a fair return in industry generally, additional capital would be attracted and competition thereby would be intensified. That is what happened, your lordship will perhaps remember, that is what happened immediately---

THE COMMISSIONER: The next generation of consumers

will suffer by the suffering of the present one.

MR. HEWARD: Not necessarily. The next generation may suffer as a result of the hardships imposed on the workmen and everybody else. For instance, what happened in the newspaper industry when owing to the rather-- well, I think they were unreasonable profits that were made, there was tremendous expansion in the industry---

THE COMMISSIONER: Those are the things that one wants to avoid.

MR. HEWARD: Yes, my lord. So that if the thing goes to ---

THE COMMISSIONER: And if you are given too much tariff protection you are liable to have that.

MR. HEWARD: Yes, but it is going, as your lordship points out, it is going immediately to create suffering to somebody in the competition or in the wrangle because they are going to go out of the picture. Now, I think I am right in stating this - I would be glad to be corrected - in the cotton industry there has been virtually no investment in new plants in Canada in the past 10 years and is an important indication that the yields during these years have not been such as to attract capital to that form of investment. The issue of new shares by the Dominion Textile in 1928 was not for the purpose of building new plant but of acquiring the Sherbrooke and Drummondville plants at that date.

THE COMMISSIONER: Going concerns.

MR. HEWARD: Mr. Gordon has just pointed out that that was not the name of the Companies when they acquired them but they were going concerns.

MR. McRUER: The Sherbrooke plant at that time did not manufacture cotton - they manufactured something else, they made tire fabrics.

MR. GORDON: Ducks and they were in the yarn business too.

MR. McRUER: They went out of the business in the character in which they were doing business and now they are in the cotton weaving and rayon business, so that it was a complete change-over.

MR. GORDON: We did that. We ran them as a tire fabric, my lord, for two years and then the Goodyear put up their own mill in Ste. Hyacinthe.

MR. HEWARD: And I therefore submit in regard to Dominion Textile that when the Commission Counsel, on page 181 of his Brief, when he says:

> "When reference is made hereafter to earnings on capital employed on operations," it must always be remembered that a portion of that capital, and in many cases the greatest portion of that capital, has been provided by the consumers of Canada and not by the investors."

That that is a conclusion without foundation. I say that conclusion is without foundation unless it is shown first what constitutes a reasonable return. That is on page 118, my lord.

that was not the name of the companies when they acquired them but they were going concerns.

Mr. McNiven: The shareholds claimed as that they did not manufacture cotton - they manufactured something else, they were like traders.

Mr. Mills : Where are they were in the year [illegible] too.

Mr. McNiven: They went out of the business in the character in which they were doing business and now they are in the cotton manufacturing and fine business, so that [illegible]

Mr. Mills: We did that. We ran them as a line [illegible], my lord, for two years and then the Government put up their own mill in Ste. Agathe.

Mr. Mills: And I therefore submit in regard to Dominion Textile that when the commission [illegible] on page 127 of his Report, where he says:

" Due reference is made hereafter to earnings on capital employed in operations," [illegible] always be remembered that a portion of that capital, and in many cases the greatest portion of that capital, has been provided by the consumers of cotton and not by the investors."

[illegible]

MR. McRUER: You see what I say is that has been provided for by the consumers of Canada and not by the investors, and there is about 40 to 80% shown on the statements filed by Mr. Kellock that has been built up of reserves.

MR. HEWARD: Plowed back?

MR. McRUER: Yes, but that is --- You have to take that with the context of what went before.

MR. HEWARD: What I say, my lord, if this is of any importance to the Commission, that statement, it can only be of importance if earnings which have been plowed back in the past have been excessive, and even there, as I pointed out, I submit it is not material if we are not plowing back earnings now that are excessive bedause ---

MR. McRUER: Well, my case though was that the tariff protection that existed in the past when you were able to plow back these earnings, and excessive earnings, is some measure of what tariff protection would do for you of that character. That may guide us for the future.

THE COMMISSIONER: We find we are always using the word "Excessive" or some similar word. It is only when you come to that that these principles apply. So long as the earnings are reasonable, then if you put part of them back into the business, why that is all right.

MR. HEWARD: We must first find out what

MR. MORROW: You see what I say is that has been provided for by the covenants of Canada and not by the inventors, and there is about 60 to 80% shown on the statements filed by Mr. Collock that has been built up of reserves.

Mr. Justice Kellock:

MR. Morrow: Yes, but that is --- You have to have that with the account I was just before.

Mr. Justice: What I say, my lord, if this is of any importance to the Commission, that statement, it can only be of importance if earnings which have been closed back in the past have been excessive, and even there, as I pointed out, I submit it is not material if we are not closing back earnings now that are excessive because ---

MR. Morrow: Well, my case though was that the tariff protection that existed in the past when you were able to plow back these earnings, and excessive earnings, is some measure of that tariff protection would do for you of that character. That may guide us for the future.

Mr. Justice Kellock: We find we are always using the word "Excessive" or some similar word. It is well also for you to bear in mind that there is a duty to apply. [illegible] the statutory [illegible], that if you are [illegible] of some [illegible] [illegible], my dear lo all right.

MR. Morrow: We had Type I [illegible] and

constitutes a reasonable return to the industry generally.

THE COMMISSIONER: But you must first give the shareholders a reasonable dividend and then in addition to that ---

MR. HEWARD: As far as tariff protection is concerned, it does not seem to me to matter what part of a reasonable return has been plowed back, although I should think that those in charge of the administration of the tariff and the policy of the country would object seriously if part of the return was not plowed back by a protective industry. I could see where they would think that industry was being badly run.

THE COMMISSIONER: Was remaining an infant all the time.

MR. HEWARD: Not only that but would be courting disaster.

THE COMMISSIONER: It would be ---

MR. HEWARD: It would be almost remaining an imbecile. I would think it is not being prudently managed.

THE COMMISSIONER: Oh, it is like any other thing in life. Supposing you have to appoint somebody to a position and have come to a conclusion as to the proper salary in regard to the kind of man wanted, and his ability, and you pay him $20,000. You cannot be told, "Oh, give him $10,000 so that he could put

it aside for himself." It is his business too.

MR. HEWARD: I would think much more of him as a prudent administrator of my business if I knew out of his salary he was doing his best to put aside part of it.

THE COMMISSIONER: That would be his duty. It is your duty to give him a proper salary and it is his duty to put as much of it aside as proper. Likewise, if these companies have been getting a reasonable return it is their duty.

MR. HEWARD: I submit the figures I have shown your lordshipon the return on the investment at cost, and which I am just going to show your lordship - I think I will just have time to do it before we adjourn - on the value of the investment will estblish conclusively that the Dominion Textile Company's return has been reasonable as regards the investment at cost and less than adequate on the value of the investment. Before I get on to these figures I would just like to point out that I said no matter how that value built up, whether earnings plowed back or natural increase in value, the value should be considered for the purpose of estimating the reasonableness of the return. I have just dealt with the earnings plowed back and of course I think it is obvious that natural increase in value of the assets is quite legitimate and represents to-day's replacement value, and that is the value which we are entitled

it aside for himself." It is his business too.

MR. HEARD: I would think much more of him as a prudent administrator of my business if I knew out of his salary he was doing his best to put aside part of it.

THE COMMISSIONER: That would be his duty. It is your duty to give him a proper salary and it is his duty to put as much of it aside as proper. I know if these companies have been getting a reasonable return it is their duty.

MR. HEARD: I submit the figures I have shown your lordship on the return on the investment at cost, and which I am just going to show your lordship - I think I will just have time to do it before we adjourn - on the value of the investment will establish [illegible] the Sudbury [illegible] return has been reasonable as regards the investment at cost and less than appears to on the value of the investment. Before I get on to those figures I would just like to point out that I said no matter how that value built up, whether earnings plowed back or natural increase in value, the value should be considered for the purpose of estimating the reasonableness of the return. I have just dealt with the earnings plowed back and of course I think it is obvious that natural increase in value of the assets is quite legitimate and responsive to-day's requirement value, and that is the value which [illegible]

to have a return on.

MR. McRUER: In this table you add the 1920 appraisal.

MR. HEWARD: Part of it.

MR. McRUER: Well, $9,830,000 out of $10,400,000 and notwithstanding the decline in value since 1920 you still maintain you should have a return on the 1920 values.

MR. HEWARD: I am going to deal with that very fully. I do not agree with the decline in value.

MR. McRUER: They got up and stayed there.

THE COMMISSIONER: Are you going to read from your Factum now?

MR. HEWARD: It is page 20. I just want to read up to the figures I am going to give:

> "The real value of the investment, however built up, must be determined as at the time of determination of the extent of protection to be afforded, and the reasonableness of the rate of return should be considered as at that time and for the future thereafter, if the other basis, that of the original cost of the investment, were used, it would mean that tariff protection might protect existing companies but not encourage the establishment of new ventures."

And, of course, I am assuming that the encouraging of new ventures in this industry is desirable, and I am going to deal with that in another part.

Mr. Jones & Laughlin

Mr. Morgan: In this table you did the last expen-

Mr. McLeod: Part of it.

Mr. Morgan: Well, $6,000,000 out of $6,400,000 and notwithstanding the decline in value since 1930 you still-that you could have a return on the 1930 value.

Mr. McLeod: I am going to deal with it a very fair-I do not agree with the decline in value.

Mr. Morgan: They got no and earned there.

The Commissioner: Are you going to read from your Mr.Cum book?

Mr. McLeod: It is here Mr. I just want to read up to the figures I am going to give:

"The real value of the investment, however built up, must be determined as at the time of determination of the extent of protection to be afforded and the reasonableness of the rate of return should be considered as at that time and for the future thereafter. If the other words, that of the original cost of the investment, were used, it would mean that tariff protection might protect existing companies but not encourage the establishment of new ventures."

And, of course, I am assuming that the encouraging of new ventures is the-[illegible]. Certainly, we are going to deal with that in another [illegible].

"It is important therefore to consider the earnings of Dominion Textile Company, Limited, in relation to the value of the investment in that company, in order to ascertain whether these are low, adequate or excessive."

And for that purpose let us turn first to Exhibit 1232, page 5. That is the Exhibit that Mr. Glassco testified to.

Now, this Exhibit, my lord, refers only to that partof the investment which is represented by preferred and common shares, that part of the value of the investment, and it deals with the period from the year ending March 31st, 1920, to March 31st, 1936, and the value of the investment is arrived at by adding to the total investment capital in each year as shown on page 3 of this exhibit that part of the increase in values indicated by the 1920 appraisal which was written into the book value. Part of the increase in value which was written in amounted to $9,837,219.03, as has been previously mentioned. Now, it is not possible to deal with the matter from that point of view before 1920 because the appraisal was not made until 1920. We have to assume that depreciation goes on from year to year---

MR. McRUER: Why not take the book value?

MR. HEWARD: Well, that is book value.

MR. McRUER: The value as shown on the books.

"It is legal self-evident to consider the
earnings of Dominion Bentonite Company, Limited,
in relation to the value of the investment in
that company. In order to ascertain whether the
[illegible] have, although on an average,
and for that purpose let us turn first to Exhibit IXXX,
page 3. That is the exhibit that Mr. Glassco testi-
fied to.

Now, this exhibit, my lord, refers only to that
part of the investment which is represented by preferred
and common shares, that part of the value of the inves-
ment, and it deals with the period from the year ending
March 31st, 1920, to March 31st, 1930, and the value
of the investment is arrived at by adding to the
total investment capital in each year as shown on
page 3 of this exhibit that part of the increase in
values indicated by the 1930 appraisal which was
written into the book value. Part of the increase
in value which was written in amounted to $3,027,[illegible],
as has been previously mentioned. Now, it is not
possible to deal with the matter from that point of
view before 1920 because the appraisal was not made
until 1930. We have to assume that depreciation
[illegible] the [illegible]—

Mr. [illegible] Why did [illegible]

Mr. [illegible] Well, that is [illegible]

Mr. [illegible] The value is [illegible]

MR. HEWARD: When?

MR. McRUER: Up to 1920.

MR. HEWARD: That is what we did, but excluded the intangibles.

MR. McRUER: You just start at 1920?

MR. HEWARD: We do not know whether the value was any different or had increased prior to that or not.

MR. McRUER: Do you know whether it has decreased since then?

MR. HEWARD: I am going to deal with that fully at some length.

MR. McRUER: If you do not know whether it increased prior to 1920 and you just take---

MR. HEWARD: I am going to deal with that in its proper order.

THE COMMISSIONER: For instance, that I may understand, where do you get this first figure from? Total invested capital cost basis?

MR. HEWARD: That is the same as appears on page 3 in the third column from the right. See total invested capital, 1920. For instance, you will find it is $9,887,379.75. That is total invested capital at cost.

THE COMMISSIONER: Yes, I see.

MR. HEWARD: And that is on the cost basis - that is to say after depreciation, and then you add the amount of the appraisal which was reflected in the write-up, $9,837,219.03, and then you get the total

MR. MORGAN: You just start at 1940?

MR. HAMILTON: We do not know whether the value was any difference or had increased prior to that or not.

MR. MORGAN: Do you know whether it has increased since then?

MR. HAMILTON: I am going to deal with that fully at some length.

MR. MORGAN: If you do not know whether it increased prior to 1940 and you just take---

MR. HAMILTON: I am going to deal with that in my general answer.

THE COMMISSIONER: For instance, that I may understand, where do you get this first figure from?

MR. HAMILTON: That is the same as appears on page 3 in the third column from the right. See total invested capital, 1940. For instance, you will find it is $4,887,372.70. That is total invested capital in 1940.

THE COMMISSIONER: Yes, I see.

MR. HAMILTON: And that is on the cost basis - that is to say after [illegible], and then you add the [illegible] of the original value was [illegible] $4,887,372.70, and then you get the total

value of the investment as reflected by the capital structure and then you have the earnings adjusted for fluctuations in reserves in the same way as on page 3. The same earnings exactly as there are on page 3. Then we get the "Ratio of adjusted earnings to indicated value of investment." And then if we take that we find that during that 17-year period the average ratio of earnings to the value of the investment amounted to only 5.08%. In the last ten years of the period the average rate of return was only 4.75%. That is not worked out on this table but it has been worked out, which it will be noted is considerably less than the interest rates on the bonds outstanding during that period.

MR. McRUER: That again would be raised considerably by adjustments, 1933.

MR. HEWARD: Very little over the 10-year period.

MR. McRUER: It would be over 5% on the average.

MR. HEWARD: I don't think so. It might. I think it is a little over a quarter, about one-third of 1%. In any event it is so small that it does not mean much. The figure is so low anyway, 4.75%, considerably less than the bonds outstanding during that period, and in the year ending March 31st, 1935, the ratio was only 3.9% and in 1936 the ratio was only 3.5%.

That statement, my lord, I am going to deal

value of the investment is reflected by the capital structure and then you have the earnings adjusted for fluctuations in reserves in the same way as on page 6. The same earnings exactly as there are on page 6. Then we get the ratio of adjusted earnings to indicated value of investment." And then if we take that we find that coming to 17-year period the average ratio of earnings to the value of the investment amounted to only 6.06%. In the last ten years of the period the average rate of return was only 4.70%. That is not worked out on this basis but it has been worked out, which it will be noted is considerably less than the interest rates on the bonds outstanding during that period.

Mr. Morris: There would be related somewhat only by adjustments, less.

Mr. Dodge: It would be over if we the average.

Mr. [illegible] ... It looks, I think it is a little over a quarter, about one-third of 1%. In any event it is so small that it does not mean much. The figure is so low anyway, 4.70%, [illegible] ... only 4.06%.

[illegible]

with another statement now taking in the bonds, if your lordship wants to adjourn?

THE COMMISSIONER: Yes, this may be a little longer. We will adjourn now.

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-- The Commission adjourned at 5 P.M. to resume Friday, March 5th, 1937, at 10.30 A.M.

ROYAL COMMISSION ON THE TEXTILE INDUSTRY

HON. MR. JUSTICE W.F.A. TURGEON,

Commissioner,

A.S.Whiteley, Secretary,

ONE HUNDRED AND TWENTY-FOURTH DAY

(March 5th, 1937)

A R G U M E N T

Robert Brydie,
Official Reporter

ROYAL COMMISSION ON THE TEXTILE INDUSTRY

HON. MR. JUSTICE W.F.A. TRUGEON,

Commissioner,

A.S. Whiteley, Secretary,

Appearances:

J. C. McRuer, K.C. and E. Beauregard, K.C.	Commission Counsel,
R.L. Kellock, K.C.	For Primary Textile Institute.
C.G. Heward, K.C. Aime Geoffrion, K.C. and C.T. Ballantyne,	For Dominion Textile Company,
S.G. Dixon, K.C.	For Courtaulds Limited,
L.A. Forsyth, K.C.	For Canadian Celanese Ltd. and Canadian Silk Products Limited.
Thos. Tremblay, K.C. and J.H. Hebert,	For M.E. Binz Co. Ltd.
Francois Lajoie, K.C.	For Wabasso Cotton Co.

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[illegible]

Mr. Mr. [illegible] K.C.A. [illegible],

[illegible],

[illegible], [illegible],

A P P E A R A N C E S:

J. C. Kelner, K.C. and E. Bourneard, K.C.	[illegible] Commission [illegible],
A.I. Kellock, K.C.	For Primary Textile [illegible].
C.C. Morand, K.C. [illegible] K.C. and C.J. [illegible]	Dom [illegible] Textile [illegible].
[illegible] K.C.	For [illegible] Limited.
L.A. Forsyth, K.C.	For Dominion Colleries Ltd., and Dominion Oil [illegible] Limited.
Thos. Tremblay, K.C. and [illegible]	For [illegible] Pipe Co. Ltd.
[illegible] Lapin, K.C.	For [illegible] [illegible].

— [illegible] —

Ottawa, Ontario,
March 5, 1937

-- The Commission resumed at 10.30 a.m.

Argument by Mr. Heward (Resumed).

My lord, when we adjourned last evening I had just submitted to your lordship the statement showing the ratio of earnings to the value of the investment as represented by the preferred and common shares. That was page 5 of exhibit No.1232, and we dealt with that, and I intimated to your lordship that I was going on to another statement, and that is page 3 of exhibit 1356 which I filed yesterday. That shows the statement as to earnings on capital investment, including funded debt and the value of the investment, that is to say the net value of what is lying behind the bonds, the preferred and the common stock.

THE COMMISSIONER: Is that the sheet that includes the fixed asset values resulting from the 1920 appraisal?

MR. HEWARD: Yes, that includes it the same as 1232 did, my lord.

THE COMMISSIONER: I just wanted to identify the sheet.

MR. HEWARD: Yes, the third sheet. If we look at that, which covers the seventeen years from 1920, we find that the average ratio of earnings to the net value of the assets represented by these three classes of investments during those seventeen years was 5.24 per cent, and in the last ten years

OTTAWA, ONTARIO,
March 5, 1937

-- The Commission resumed at 10.30 a.m.

Argument by Mr. Howard (resumed).

My lord, when we adjourned last evening I had just submitted to your lordship that the average ratio of earnings to the value of the investment as represented by the preferred and common shares, that was page 5 of exhibit No.1232, and we dealt with that, and I intimated to your lordship that I was going on to another statement, and that is page 6 of exhibit 1236 which I filed yesterday. That shows the statement as to earnings on capital investment, including funded debt and the value of the investment, that is to say the net value of what is lying behind the bonds, the preferred and the common stock.

THE COMMISSIONER: Is that the sheet that includes the fixed asset values resulting from the land revaluation?

MR. HOWARD: Yes, that includes it the same as 1232 did, my lord.

THE COMMISSIONER: I just wanted to identify the sheet.

MR. HOWARD: Yes, the total sheet. If we look at that, which covers the seventeen years from 1920, we find that the average ratio of earnings to the net value of the assets represented by these three classes of investments during those seventeen years was 5.24 per cent, and in the last ten years

the average rate of return was only 4.91 per cent. That is a calculation which does not appear on the sheet. Taking the first half of that ten year period namely the period 1927 to 1931 inclusive, the return was 6.27 per cent; and in the five year period ended 1936, that is from 1932 to 1936, it was 3.54 per cent; and in the year 1936 it was 3.71 per cent, in 1935 4.25 per cent and in 1934 5.60 per cent. In regard to this calculation I should mention again that the return includes what has been left in as well as what has been distributed to the shareholders, what has been ploughed back, as in all the other exhibits. What I mean by that, my lord, is that the 5.24 per cent includes not only what has been distributed but also what has been left in.

THE COMMISSIONER: Yes. Well, this is a statement of earnings.

MR. HEWARD: Yes, my lord. Then, if you look at exhibit 1357, which is the one I filed yesterday, page 5 --

THE COMMISSIONER: That is the last page?

MR. HEWARD: That is the last page, my lord; that shows the return on the value of the investment as represented by bank indebtedness, funded debt -- that is bonds -- and preferred and common stock. And there your lordship will note that the average ratio of earnings for the seventeen year period was 5.22 per cent. I have had another calculation made, showing that in the last ten years the average

the average rate of return was only 4.11 per cent. That is a calculation which does not appear on the sheet. Taking the first half of that ten year period namely the period 1927 to 1931 inclusive, the return was 6.27 per cent; and in the five year period ended 1936, that is from 1932 to 1936, it was 3.34 per cent; and in the year 1936 it was 2.71 per cent, in 1935 4.25 per cent and in 1934 5.60 per cent. In regard to this calculation I should mention again that the return includes what has been left in as well as what has been distributed to the shareholders, what has been plowed back, as in all the other calculations. What I mean by that, my Lord, is that the 3.34 per cent includes not only what has been distributed but also what has been left in.

THE COMMISSIONER: Yes. Well, this is a statement of earnings.

MR. FRASER: Yes, my Lord. Then, if you look at exhibit 1107, which is the one I filed yesterday, page 5 --

THE COMMISSIONER: That is the last page?

MR. FRASER: That is the last page, my Lord; that shows the return on the value of the investment as represented by bank indebtedness, funded debt -- that is bonds -- and preferred and common stock. And there your Lordship will note that the average ratio of earnings for the seventeen year period was 5.22 per cent. I have had another calculation made, showing that in the last ten years the average

rate of return was 4.81 per cent, and in the first five years of that ten year period, that is 1927 to 1931, it was 6.23 per cent, and in the last five years, 1931 to 1936, it was 3.52 per cent. In the year ended March 31, 1936, it was 3.69 per cent, and in the previous year it was 4.20 per cent, and in the preceding year 5.85 per cent.

To sum up, I repeat what I said at the outset of my argument in regard to return on investment, that these figures, taken both on the investment and cost and taken on the value of the investment, that is the value of the net asset now behind the investment, whether looked at from the point of view of the preferred and common stock holders, or from the point of view of all the investment represented by funded debt and common stocks, or from the point of view of the investment, if we can call it an investment, of bank loans and also of funded debt and common stock, have been most reasonable on the investment at cost from any point of view, and on the value of the investment I think they have been lower than anybody could say was reasonable for an industry with risks of that kind. And as a guide to the sufficiency or insufficiency of tariff protection, I submit that these earnings, looked at particularly from the point of view of the value of the investment, indicate that the existing protection afforded to the textile industry is not sufficient

rate of return was 4.81 per cent, and in the first five years of that ten year period, that is 1927 to 1931, it was 6.22 per cent, and in the last five years, 1931 to 1936, it was 3.30 per cent. In the year ended March 31, 1936, it was 3.39 per cent, and in the previous year it was 4.40 per cent, and in the preceding year 5.85 per cent.

To sum up, I repeat what I said at the outset of my argument in regard to return on investment, that these figures, based both on the investment cost and based on the value of the investment, that is the value of the net assets now behind the investment, whether looked at from the point of view of the preferred and common stock holders, or from the point of view of all the investment represented by funded debt ordinary stocks, or from the point of view of the investment, if we can call it an investment, of bank loans and also of funded debt and common stock, have been most reasonable on the investment at cost from any point of view, and on the value of the investment I think they have been lower than anybody could say was reasonable for an industry with risks of that kind. And as a guide to the sufficiency or insufficiency of tariff protection, I submit that these earnings, looked at particularly from the point of view of the value of the investment, indicate that the existing protection afforded to the textile industry is not sufficient

to ensure a fair and moderate return, a reasonable return.

MR. McRUER: Have you any suggestions to make as to what it ought to be in order to do that?

MR. HEWARD: Well, I do not think I have to make that suggestion, because we have been attacked for making an unreasonable return, and I think we should get what is reasonable. We have seen one authority which said that fifteen per cent was not unreasonable. We have to look around at industries generally. I might look over the matter and think about it further.

THE COMMISSIONER: Who is the authority?

MR. HEWARD: The Privy Council case about the bridge, when they said that fifteen per cent was not an unreasonable return.

MR. McRUER: But it is a matter of tariff. What tariff would give you what you think you ought to have?

MR. HEWARD: I should like to deal with that at another point.

MR. McRuer: As long as you are going to deal with it. Do not leave it in the air.

MR. HEWARD: It is another branch. If I may, I should like to deal with it later. I want to say just a very brief word in regard to management. Of course I recognize that in considering the return on invested capital, or the more scientific consideration of the return on the value of the

to ensure a fair and moderate rebate, a reasonable rebate.

MR. MOLSON: Have you any suggestions to make as to what it ought to be in order to do that?

Mr. MEIGHEN: Well, I do not think I have to make that suggestion, because we have been a thousand for making an unreasonable return, and I think we should get what is reasonable. We have seen one authority which said that fifteen per cent was not unreasonable. We have to look around at individuals generally. I might look over the matter and think about it further.

THE COMMISSIONER: Who is the authority?

MR. MEIGHEN: The only authority was cited to the bridge, when they said that fifteen per cent was not an unreasonable return.

Mr. MOLSON: But it is a matter of tariff. What tariff would give you what you think you ought to have?

Mr. MEIGHEN: I should like to deal with that at another point.

Mr. MOLSON: As long as you are going to deal with it. Do not leave it in the air.

Mr. MEIGHEN: It is another branch. If I may, I should like to deal with it later. I want to say just a very brief word in regard to management. Of course I recognize that in normal times the return on invested capital, or the earning power, or the earnings of the company or the rate of

investment, regard must be had also to the question of whether the industry under consideration has been properly managed. I realize that because it would not be proper, of course, to accord an increased rate of tariff protection to a company or an industry as the result of the small return yielded by the industry.

THE COMMISSIONER: Is there any suggestion that the Dominion Textile Company at any time was not efficiently managed?

MR. HEWARD: I was just coming to that, my lord. I think it has been recognized throughout that the company has been, and is being, prudently and economically managed. But there are some interesting points in this connection. I produce an exhibit of the Dominion Textile Company which deals with the distribution of the sales dollar for every year for the past ten years, and then it deals with each of the two five-year periods and then the ten-year period. What I think is a particularly remarkable indication of the good management of the company is the small proportion which the administration expenses constitute of the amount of sales. Your lordship will find these expenses of administration the seventh item down from the top; and if we look for the ten-year period, at the extreme right hand of the first page, we find that the amount of each dollar which was consumed in expenses of administration was only 1.04 cents. There is an

investment, regard must be had also to the question of whether the industry under consideration has been properly managed. I realize that because it would not be proper, of course, to engage an interested rate of tariff protection to a company or an industry on the result of the small return yielded by the textile industry.

[illegible] Is there any question that the Dominion Textile Company at any time was not efficiently managed?

MR. FARRAND: I was just coming to that, my lord. I think it has been recognized throughout that the company has been, and is being, prudently and economically managed. But there are some interesting points in this connection. I produce an exhibit of the Dominion Textile Company which deals with the distribution of the sales dollar for every year for the past ten years, and then it deals with each of the two five-year periods and then the ten-year period. What I think is a particularly remarkable indication of the good management of the company is the small proportion which the amortization expenses bear with the amount of sales. Your lordship will find these expenses of amortization the seventh item down from the top; and if we look for the ten-year period, at the extreme right hand of the first page, we find that the amount of each dollar which was expended in expenses of amortization was only [illegible]. There is a

equally remarkable record in regard to selling charges, which is the item next above. The selling charges constitute only 1.74 cents in each dollar. That is about 1¾ cents in each dollar. Throughout the same period the amounts expended out of each sales dollar for materials was 43.82 cents, for mill wages 26.79 cents, and for working expenses (which, I understand, includes such items as fuel, power, water rentals, lighting, supplies other than materials and a lot of items of that kind) 10.53 cents. When the total expenditure in each dollar for selling and administration, amounting in all to 2.78 cents -- that is the combination of the 1.74 and the 1.04 -- is contrasted with the total expenditure in each dollar for materials, mill wages and working expenses, there is found, I submit, a remarkable indication of sound management. I think therefore that we are justified in looking at our returns on investment in relation to the question of tariff protection as a guide to it. There is no element upsetting that in that feature of good management. Good management is present.

I want next to proceed to deal with certain arguments in regard to earnings which have been advanced by commission counsel. First of all, commission counsel on frequent occasions during the hearing and in his brief and throughout his argument advanced the proposition that all that the company had received for its original issue of $5,000,000

[illegible] remarkable record in regard to selling charges, which is the item next above. The selling charges constitute only 1.74 cents in each dollar. That is about 1¾ cents in each dollar. Throughout the same period the amounts expended out of each sales dollar for materials was 49.82 cents, for mill wages 30.79 cents, and for working expenses (which, I understand, includes such items as fuel, power, water rentals, lighting, supplies other than materials and a lot of items of that kind) 10.58 cents. When the total expenditure in each dollar for selling and administration, amounting in all to 2.78 cents — that is the combination of the 1.74 and the 1.04 — is contrasted with the total expenditure in each dollar for materials, mill wages and working expenses, there is found, I submit, a remarkable indication of sound management. I think therefore that we are justified in looking at our returns on investment in relation to the question of tariff protection as a guide to it. There is no element upsetting that in that feature of good management. Good management is [illegible].

I want next to proceed to deal with certain arguments in regard to earnings which have been advanced by counsel for [illegible]. First of all, [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] $3,000,000

par value of common stock was $500,000 in cash. We have already dealt with that. I had intended to deal with it, but I will not deal with it now at any great length because we also discussed it yesterday and the day before. My submission is that the company received much more than that. It received tangible assets of which a fair estimate of the replacement value was $2,094,000, and intangibles of considerable value. Then, based on this premise, commission counsel made certain calculations which were made for the purpose of showing exorbitant profits earned in relation to this amount of cash. And this theory it was sought to support by statements relating to the company contained in the exhibit No. 917 which was filed by Mr. Howson, the commission auditor, and in regard to which he gave evidence. What I will seek to establish is that the contentions so advanced should be disregarded. First, because the premises are false; and of course your lordship will understand that when I use the word "false" it is in the sense of logics and not in any invidious sense.

THE COMMISSIONER: They are fallacious.

MR. HEWARD: I remember, when we were being taught logic --

THE COMMISSIONER: We know what "false premises" means.

MR. HEWARD: There is no invidious intent in that at all. First, because the premises are false, and secondly because the propositions are based on

par value of common stock was $500,000 in cash. We have already dealt with that. I had intended to deal with it, but I will not deal with it now at any great length because we also discussed it yesterday and the day before. My submission is that the money received was not the full [illegible]. [illegible] equity of which a fair estimate of the [illegible] value was $2,094,000, and intangible or considerable value. Then, based on this premise, some-[illegible] and made certain calculations which were made for the purpose of showing exorbitant profits earned in re-lation to this amount of cash. And this theory it was sought to support by so-called relation to the company contained in the exhibit No. 217 which was filed by Mr. Rowan, the examination auditor, and in regard to which he gave evidence. What I will seek to establish is that the contentions so advanced should be disregarded. First, because the premises are false; and of course your Lordship will understand that when I use the word "false" it is in the sense of logics and not in any invidious sense.

THE COURT ADVISES: They are fallacious.

MR. MACKAY: I remember, when we were being taught logic --

THE COURT ADVISES: We know what "false pre-mise" means.

MR. MACKAY: There is no invidious intent in that at all. First, because the premises are false, and secondly because the conclusions are based on

erroneous principles, and thirdly, that the inferences and conclusions drawn from these premises by reason of these erroneous deductions are themselves erroneous. I have already dealt with the reasons why I consider the premises false, namely that $500,000 was all that was received by the company for its original issue of common stock. I do not need to labour that any more. In support of that I said that one reason for saying that the tangible assets lying behind the stock of the constituent companies which the new company had received was that the replacement value of those assets was and must have been, greater than was indicated by the price paid by the syndicate to the distressed shareholders, and it was a fair assumption that the replacement value was what was shown on the books of the old companies, and that showed a net replacement value in excess of all the other securities issued by the Dominion Textile Company Limited of $2,094,000. Exhibit 917, however, disregards that difference between the $500,000 in cash and the $2,594,000 which I say was the least amount that we can take the tangible assets at. He gave two reasons in his evidence. His first reason was that the company had admitted that these values should not be taken into consideration because the company -- the Dominion Textile Company -- had written off those values in its books. Now Mr. Glassco gave evidence at page 13,747, and --

MR. McRUER: That is true, is it not?

MR. HEWARD: No.

MR. McRuer: That they had written them off?

MR. HEWARD: No. I am just going to deal with that. Mr. Glassco gave evidence in those pages that the company did not write off these values and he explained that the commission auditor had not had the whole picture before him and that the write-off to which the commission auditor referred was the reduction applicable to the good-will account and not a reduction in the value of the company's assets themselves. He indicated that he was going to take that up with the commission auditor afterwards; and we thought we had satisfied him.

THE COMMISSIONER: The reduction was in the intangibles?

MR. HEWARD: That is what we contend is the case.

MR. McRUER: Oh well, these other properties were closed, and the records show --

MR. HEWARD: We thought that we had convinced Mr. Howson that that was the case, but apparently we have not, because Mr. McRuer in this argument, at pages 14,295 and 14,296, claimed that $2,200,000 was written off the assets between the inception of the company and 1910.

MR. McRUER: I will extend that to 1912, and Mr. Glassco agreed with me that that was the fact.

MR. HEWARD: I was going to deal with that, because all that was written off between the inception of

Mr. Kenny: Yes.

Mr. Mulmer: That they had written them off?

Mr. Kenny: No. I am just going to deal with that. Mr. Gleason gave evidence in those pages that the company did not write off these values and he explained that the commission auditor had not had the whole picture before him and that the write-off to which the commission auditor referred was the reduction applicable to the good-will account and not a reduction in the value of the company's assets themselves. [illegible] the commission auditor afterwards; and we thought we had satisfied him.

The COMMISSIONER: The reduction was in the [illegible]?

Mr. Kenny: That is what we contend is the case.

Mr. Mulmer: Oh well, these other accounts were closed, and the records show --

Mr. Kenny: We thought that we had convinced Mr. Howson that that was the case, but apparently we have not, because Mr. Mulmer in his argument, at pages [illegible], Mr. [illegible] was written off [illegible] the company was [illegible].

Mr. Mulmer: I will extend that to 1918, and Mr. Gleason agreed with me that that was the fact.

Mr. Kenny: I was going to deal with that, [illegible]

the company and 1910 was depreciation and write-offs of that kind amounting to only $351,000.

MR. McRUER: The item had the year wrong, that is all.

MR. HEWARD: If we look at page 252 of my friend's pamphlet --

MR. McRUER: This is not the "free trade pamphlet" that was referred to in the House of Commons the other night, is it?

MR. HEWARD: If we look at page 252 we find that the charges to operations and reserves for depreciation or obsolescent plant did not amount to $2,200,000 until 1914. And I submit that these charges were not excessive, and that this is apparent from the following. The average annual value of the building was approximately $3,100,000. So that there was a total annual value of machinery and buildings combined of $10,100,000. The write-offs during the nine-year period from 1905 to 1914 were therefore worked out at approximately 2.45 per cent per annum, and I submit that that is a very low figure for buildings and machinery.

MR. McRUER: Yes, but you are disregarding nearly $2,000,000 in charges to operations for repairs and betterments.

MR. HEWARD: Oh, but they are proper charges. You say these are for betterments. I say that the charges to operations for repairs are proper charges to operations.

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the company and 1910 was depreciation and write-offs of that kind amounting to only $[illegible],000.

MR. [illegible]: The item had they or wrong, that is all.

5 MR. [illegible]: If we look at page 652 of my [illegible] —

MR. [illegible]: This is not the "free trade re-bate" that was referred to in the House of Commons [illegible] [illegible].

10 MR. [illegible]: If we look at page 652 we find that the charges to operations and reserves for de-preciation or obsolescence plant did not amount to $[illegible],000 until 1914. And I submit that these charges were not excessive, and that this is apparent from the following. The average annual value of the buil-ding was approximately $[illegible],100,000. So that there is a total annual value of machinery and buildings com-bined of $10,100,000. The write-offs during the [illegible] period [illegible] [illegible] [illegible] worked out at approximately 2.4 per cent per annum, and I submit that that is a very low figure for buildings and machinery.

15

MR. [illegible]: Yes, but you are discounting [illegible] by $8,000,000 in charges to operations for repairs and betterments.

20

MR. [illegible]: Oh, but they are proper charges. You say these are for betterments. I say that the charges to operations for repairs are proper charges to operations.

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[illegible] follows

THE COMMISSIONER: You say that the word betterments is improperly introduced.

MR. HEWARD: I say it is improperly introduced there. I mean betterments and improvements. I take it that my learned friend Mr. McRuer means by that an improvement which should be charged to capital, a capital outlay. Is not that right, Mr. McRuer?

MR. McRUER: Is it not how it is dealt with? Is it not how it is in your records? What I mean is that you are keeping the plant up to standard by charges to operations, and your annual statements and books and records -- everything shows that in all your records.

MR. HEWARD: Our books do not use the word "betterments".

MR. McRUER: But your annual statements repeatedly have said that you have ~~got to~~ kept the plant up to a high state of efficiency and so on, by charges to operations, and then you write off a chunk of the plant. You cannot have it both ways.

MR. HEWARD: Yes, of course we can.

THE COMMISSIONER: Has this been worked out, how much of these figures correspond to betterments and how much to repairs? I would like to get an idea what it is all about. You say these are on repairs?

MR. HEWARD: These are repairs. They are all proper charges to operations.

Mr. McRUER: No, but you see, Mr. Howson did all he could to have the company divide them up, and

THE COMMISSIONER: You say that the word betterments is improperly introduced.

MR. MORAN: I say it is improperly introduced there. I mean betterments and improvements. I take it that my learned friend Mr. Moran means by that an improvement which would be charged to capital, a capital outlay. Is not that right, Mr. Moran?

MR. MORAN: Is it not how it is dealt with? Is it not how it is in your records? But I presume that you are keeping the plant up to standard by charges to operations, and your annual statements and books and records -- everything shows that in all your records.

MR. MORAN: Our books do not use the word betterments".

MR. MORAN: But your annual statements repeatedly have said that you have got the plant up to a high state of efficiency and so on, by charges to operations, and then you write off a chunk of the plant. You cannot have it both ways.

MR. MORAN: Yes, of course we can.

THE COMMISSIONER: Has this been worked out, the work of Mr. Moran [illegible] -- [illegible] that it is all about. You say there are no renewals?

MR. MORAN: There are renewals. They are all charged to operations.

MR. MORAN: No, but you see, Mr. Moran did not do so until he here Economy Civil Issues, and

there was some correspondence put in in regard to it. Mr. Howson says they could not go back as far as this to divide it up. You see there was no charge to depreciation at all until 1918.

MR. HEWARD: No, but we did have charges to operations and reserves for depreciated or obsolescent plant, as you show in your second column from the left.

MR. McRUER: Not regularly made, but made periodically, as it is shown at different times.

MR. HEWARD: Whether scientific or not, there they were.

MR. McRUER: And we do know you closed certain mills. You can not say, when you close up a mill, and write that off, that that million dollars, $1,100,000 was losses on closed mills, -- you cannot charge that to ordinary depreciation, can you?

MR. HEWARD: All right, Mr. McRuer, but any charges of that kind would be and are in the second column from the left, in which I have calculated this $2,200,000, and therefore they are included in that --

MR. McRUER: The closed mills are in the charges to operations for repairs and betterments. I cannot understand that.

MR. HEWARD: In number 2 column, if you run down these figures, you will find they come to approximately $2,200,000.

MR. McRUER: Yes.

MR. HEWARD: And in that is included any write-off that there would be from the closing of the

Mr. Howson says they could not do back as far as this to divide it up. You see there was no change to operation as all until 1918.

Mr. M. A.M: No, but we did have change to operations and reasons for terminated or abandoned plant, as you know in your second column from the left.

Mr. McPhee: Not recently made, but made periodically, as it is done at all great times.

Mr. Mitchell: Whether we lose MTTs or not, there they are.

Mr. Mitchell: And we do know you closed down the mills. You do not say, when you close up a mill, and write that off, that that million dollars, $1,500,000 loses or closed mills, -- you account some that to ordinary depreciation, can you?

Mr. Howson: All right, Mr. Mitchell, but they charges other kind would be and are in the second column from the left, in which I have calculated this $2,500,000, and therefore they are included in that --

Mr. McPhee: The closed mills are in the charges to operations for repairs and betterments. I do not [illegible] that.

Mr. Hay D: In number 2 column, if you run down three lines, you will find that [illegible] - [illegible] $4,000,000.

Mr. McPhee: Yes.

Mr. Hay D: And it has to include the [illegible] that would be from the [illegible] of the

mills, so I am including that, and I say even including that the whole thing was 2.45 per cent.

MR. McRUER: I know, but the point is the write-off was for closing mills, not for ordinary depreciation, and our contention was that these mills were closed and written off that you claim had this great value of $2,500,000.

MR. HEWARD: Remember that when we close a mill we do not simply junk the machinery. As you pointed out in your own brief, we put it in another mill where it can be used to better advantage.

MR. McRUER: Yes, but you do not write off the machinery when you put it in another mill where it can be used to better advantage. This is a write-off for closing the mill.

MR. HEWARD: The whole of the write-offs, including the amount for the closing of mills, amounted to 2.45 of the average value of the assets, and I say that that is extremely moderate. I am also informed that a substantial part of the write-offs in 1912 and 1913 which are included in that figure of $2,200,000 consisted in writing off the amounts applicable to the good-will to which I have referred. So that I do not think the argument can be used that these things were not worth it because we wrote them off immediately afterwards; we wrote off only ordinary depreciation, a very low depreciation, in the nine years that I have mentioned. Therefore I submit that that reason falls to the ground. I have already discussed

mills, so I am including that, and I say even including that the whole thing was 2.45 per cent.

MR. McGUIRE: I know, but the point is the write-off was for closing mills, not for ordinary depreciation, and our contention was that these mills were closed and written off that you claim had this great value of $2,500,000.

MR. HOWDEN: Remember that when we close a mill we do not simply lock the machinery. As you pointed out in your own order, we put it in another mill where it can be used to better advantage.

MR. McGUIRE: Yes, but you do not write-off the mill any when you put it in another mill where it can be used to better advantage. This is a write-off for closing the mill.

MR. HOWDEN: The whole of the write-offs, including the amount for the closing of mills, amounts to 2.45 of the average value of the assets, and I say that that is extraordinarily moderate. I am also informed that a substantial part of the write-offs in 1912 and 1913 which are included in the figure of $2,500,000 consisted in writing off the amounts paid-up to the good-will to which I have referred. I do not think that I do not think the argument can be used that those things were not worth it because we wrote them out immediately afterwards; we wrote off only ordinary depreciation, a very low depreciation, in the mills you mentioned. Therefore I submit that the [illegible] mills is [illegible].

with your lordship the second reason which was given for disregarding the net values behind the common stock represented by the assets of the constituent companies; namely, the second reason that was given was that the syndicate had paid less for them. We discussed that at considerable length yesterday.

I submit therefore, that the premises are false or fallacious, because it is not correct that all that the company received for its original issue of common stock was $500,000. In the second place I submit that the deductions made by my learned friend with a view to showing that unreasonable profits had been made by the company are based on erroneous principles. In my view, and I respectfully submit it to your lordship, it is absolutely unjustifiable for any purpose for which this commission has been constituted to take the cash contribution, cash loan made in 1905 by a group of holders of the common stock and ignore their other contributions, tangible and intangible, and figure out the percentage of dividends that these shareholders would have received in respect of that cash contribution, even supposing they had retained their investment. Let us suppose it were correct that all that the company received for its original common stock issue was $500,000. In assuming that, of course, I am assuming something which we challenge and contest very emphatically. But let us assume it is correct; it is clear that if the cash investment in common stock is in any way material, the shareholders

with your lordship the second reason which was given for disregarding the net values behind the common stock represented by the assets of the constituent companies; namely, the second reason that was given was that the syndicate had paid less for them. We disregarded that at considerable length yesterday.

I submit therefore, that these companies are false or fictitious, because it is not correct that all that the company received for its original issue of common stock was $300,000. In the second place I submit that the deductions made by my learned friend with a view to showing that unreasonable profits have been made by the company are based on erroneous principles. In my view, and I respectfully submit it to your lordship, it is absolutely unjustifiable for any purpose for which this commission has been constituted to take the cash contribution, cash loan made in 1907 by a group of holders of the common stock and ignore their other contributions, tangible and intangible, and figure out the percentage of dividends that these shareholders would have received in respect of that cash contribution, even supposing they had retained their investment. Let us suppose it were correct that all that the company received for its original common stock issue was $300,000. In assuming that, of course, I am [illegible] which we shall have [illegible] later on. [illegible] it is clear that [illegible] if the cash investment in [illegible] is in any material, the [illegible]

that came in later and paid more for their stock have as much right to be considered as those who came in early, who were pioneers, and who, according to the rule applicable to all successful ventures, should pay much less because they took a much greater risk.

Mr. McRUER: In what way were these syndicate holders pioneers in this industry, because there had already been one merger before, and I think it got to the stage then that there were fourteen companies so it would seem that by that time the trails were fairly well blazed.

MR. HEWARD: I am glad my learned friend referred to that. They were pioneers in this sense, that they came along and risked half a million dollars of their money to back their judgment and they acquired these assets and turned them over in co-ordinated form, to a company which succeeded, in spite of the fact that the predecessor companies had been having a very bad time, particularly on account of their liquid position. I say they were pionners in this sense, that they took a risk. Perhaps "pioneers" may not be a good term, but they certainly were people who took an element of risk -- and that is all that is important, -- in backing their judgment with $13,000,000 worth of liabilities ahead of their very junior security. But the point is this, it is no more material to take for the purposes of this inquiry the contribution made by one group of shareholders than it is material to consider --

that came in later and paid more for their stock have as much right to be considered as those who came in early, who were pioneers, and who, according to the rule applicable to all successful ventures, should pay much less because they took a much greater risk.

Mr. McKim: In what way were these gentlemen modern pioneers in this industry, because there had already been developers before, and I think it got to the stage then that there was fourteen companies so it would seem that by that time the media was fairly well biased.

Mr. Hunt: I am glad my learned friend referred to that. They were pioneers in this sense, when they came along and risked half a million dollars of their money to work that, however well they acquired those assets and turned them over in a — civilized form, to a company which succeeded, in spite of the fact that the predecessor companies had been having a very bad time, particularly on account of their liquid condition. I say they were pioneers in this sense, but they took a risk. Perhaps "pioneers" may not be a good term, but they certainly were people who took an element of risk — and that is all that is important, — in backing their judgment with their money, and more of financial means of only one person would. But it could be only. It is not with individual to take over the property of this company and continue such to use property of an existing company — then it is merely a matter —

THE COMMISSIONER: What was the amount ahead of them? $11,000,000 or $13,000,000?

MR. HEWARD: I have a note of it, my lord. The amount ahead of the common stock that they got was $13,367,161.38. We know that part of their million dollars went to preferred and the total liabilities ranking ahead of the preferred, that is ranking ahead of both preferred and common, were $11,512,000.

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Now, as I said before, I have no brief for these gentlemen, but they did certainly take a risk. However, that is not the point I am trying to make now, my lord. It is that we are not justified, I submit, in looking at the contribution made by one particular group of shareholders, even if it was true all they contributed was $500,000 cash -- I think what they contributed was that cash plus what they had got from the shareholders at a sacrifice price, the constituent shareholders -- but even if they had only contributed $500,000 of cash to the new company I submit that it is not useful for any purpose of this inquiry to look at what they made out of their investment. I said yesterday, and I still submit, my lord, that there is a fair analogy between a proposition of that kind and a proposition of looking at what I would make on my money if I bought stock low from a shareholder at the depression and got the earnings, normal earnings of the company on it, the normal dividends or normal earnings, because I, of course, get the earnings indirectly when they are ploughed back. It is true that in the example I have just give myself, the lucky purchaser purchasing stock at the low ebb of the market, the transaction is that of a purchaser from another shareholder, but the transaction in 1905 -- and the inception of this undertaking was not 1905 but, as my learned friend points out, 1874 --the 1905 transaction was no more than a purchase of shares representing ownership of an enterprise establ shed as far back as 1874 onwards, and that purchase was made

at a low price because of the owners' distress, and the fact that the particular individuals who purchased these shares happenéd to make money has no bearing upon the reasonableness of the profits of the continuing enterprise which started in 1874. It seems to me that my learned friend has very properly pointed out this was a continuing enterprise, but in his argument and in his factum he has interjected himself into the sequence of events at 1905, and picked out this group of gentlemen who were lucky enough to buy some shares cheap.

MR. McRUER: The Privy Council doesn't say that is a fact.

MR. HEWARD: I said from the point of view of the distressed shareholders.

MR. McRUER: They said they made a very liberal allowance fo them.

MR. HEWARD: From the point of view of the distressed shareholder the shareholder got all he was entitled to, but that is another thing, because the distressed shareholder had loaded himself up with liabilities and had got himself into a frozen position-- I do not mean he had, but his management had -- and that is why the syndicate was able to buy his shares.

Then, my lord, I pass on to another point of criticism of the proposition, and that is that --

"It is equally fallacious", in my view, "to average all the dividends or earnings on the common stock and to pro-rate them against all the cash invest-

at a low price because of the owners' distress, and the fact that the particular individuals who purchased these shares happened to make money has no bearing upon the reasonableness of the profits of the contributing authorities which showed in 1924. It seems to be that my learned friend has very properly pointed out this was a contributing emergence, but to his argument and to his theorem he has introduced himself into the sequence of events at 1928, and picked out this group of gentlemen who were lucky enough to buy more shares cheap.

MR. MORRIS: The Privy Council doesn't say that is a fact.

[illegible]: I said from the point of view of the [illegible].

MR. MORRIS: They said they paid a very liberal [illegible].

[illegible]: From the point of view of the directors of Petroleum the shareholders not all be [illegible] to, but that is another thing, because the disgruntled shareholder had loaded himself up with liabilities and had put himself into a forced position I do not mean he had, but his [illegible] had -- and that is why the principle was made to buy his shares.

Then, my Lord, I came on to another point of criticism of the proposition, and that is that -- "It is equally fallacious", in my view, "to [illegible] all the dividends or earnings on the common [illegible] and no pro-rate item against all the [illegible]

"ments. Earnings must be divided among the shareholders not according to what each group paid for its shares, but according to the number of shares held. This method of calculating dividends or earnings against cash investments, whether restricted to the original shareholders or extended to all the shareholders", I submit, "is therefore unfair. The impossibility and unfairness of pro-rating the earnings on a cash basis is one of the many reasons why that basis" should not be adopted, in my opinion. So I don't think it matters what a particular group of shareholders happened to pay for their shares at any particular moment. The point is what did the company, as an enterprise, earn on its investment at cost, or the value of the investment.

Now, my learned friend's proposition, which I submit is fallacious,--

"--also overlooks the fact that shares change hands frequently, and the profit that any original shareholder who kept his shares may have made or that one who did not keep his shares would have made if he had kept them is quite immaterial".

It seems to me --

MR. McRUER: You mean the tariff ought to be raised as the shares go up on the market?

MR. HEWARD: No, no.

MR. McRUER: I don't see what difference it makes if they change hands.

MR. HEWARD: I say the shareholders should be

"merits. Earnings must be divided among the shareholders not according to what each group will for its shares, but according to the number of shares held. This method of calculating dividends or earnings works over each investment, whether restricted to the original shareholders or extended to all the shareholders, I should, "is the fairest method. The impossibility and unfairness of pro-rating the earnings on a cash basis is one of the many reasons why that [illegible] must be adopted, in my opinion. So I don't think it matters what a particular group of shareholders happened to pay for their shares at any particular moment. The point is what did the company, as an enterprise, pay on its investment at cost, or the value of the investment.

Now, Mr. Lorimer Ilsand's proposition, stated in summit is following.

"--also overlooks the fact that shares change hands frequently, and the way it that any original shareholder who kept his shares may have made up that one who did not keep his shares would have made if he had kept them is quite immaterial. It seems to me ---

MR. MOLTON: Can even the tariff ought to be raised as the shares go up on the market?

MR. [illegible] Sir.

MR. MOLTON: I don't see what difference it makes if that change hands.

MR. [illegible]: I say the shareholders should be

entitled to get a reasonable return on the value of his investment, and what happens in the stock market has nothing to do with it. The stock market is simply a thing which is depressed or excited by a lot of sometimes unsound causes, and I do not think it has anything to do with it.

MR. McRUER: What difference does it make whether they stay in one hand or change hands?

MR. HEWARD: It makes a difference; you are trying to calculate what the original shareholder would have got if he held on to his shares by establishing what he paid for those shares at that time and showing that is his return on his investment. I say that is not a scientific method of looking at it.

THE COMMISSIONER: You are always going back to what you call the real value.

MR. HEWARD: The real value of the investment.

THE COMMISSIONER: The shareholder at a particular time might pay a great deal more than the real value.

MR. HEWARD: It is a poor rule that does not work both ways.

THE COMMISSIONER: That happened in 1929, for instance.

MR. HEWARD: Yes. It is a poor rule that does not work both ways. Supposing we buy a plant; we buy a plant in, let us say, 1905 for $10,000,000, and the values of new plants of a similar kind in 1936 are only $5,000,000. We cannot ask that we earn a return on the original value of the plant.

investment, and what happens in the stock market has nothing to do with it. The stock market is simply a thing which is depressed or excited by a lot of some times unknown causes, and I do not think it has anything to do with it.

Q. Would it make a difference does it make a difference if one buys in one town or another?

A. Yes: It makes a difference; you are trying to anticipate what the original shareholder would have got if he had on his shares by anticipating what he would for those shares at that time and showing that is his return on his investment. I say that is not a scientific method of arriving at it.

The shareholder can be always going back to what you call the real value.

Q. What is the real value of the investment.

The Witness: The shareholder as a general thing might pay a great deal more than the real value.

Q. Would it be a poor rule that does not work both ways.

A. Witness: Yes. It is a poor rule that does not work both ways. Supposing we buy a plant; we build a plant in, let us say, Iron for $10,000,000, and the values of ree plants of a similar kind in 1888 are only $5,000,000. We cannot ask then we earn a return on the original value of the plant.

MR. McRUER: Isn't that just what you have done because you have not in your table -- where you are showing the average returns since 1920 you have not written down that appraisal at all. You take it at the appraisal value in 1920 although that was influenced by inflation of costs of replacement. You have not depreciated it at all right through to 1936.

MR. HEWARD: I am going to deal with that very fully, that contention in your brief, at the proper time, Mr. McRuer.

MR. McRUER: I see, alright. That is the way your table is set up at the present time anyway.

MR. HEWARD: Yes, and I think properly set up. Then, another fallacy, I submit --

"--of the proposition in regard to earnings is that it takes into consideration only the earnings of the holders of the common stock, or in fact of the original common stock. Even if the facts in regard to the ratio of earnings of the original common stockholders to their investment which Commission Counsel sought to establish were correct", which we do not admit, "these facts would be quite immaterial. It is the earnings of the Company as a whole" which must be considered, "looked at either in relation to the total capital invested, or more properly in relation to the value of the investment, and not the earnings of one class of stock or of any

Mr. [illegible]: Isn't that just that you have done because you have not in your table -- where you are showing the average returns since 1950 you have not included [illegible] in 1950 although the [illegible] the unpaid vale in 1950 although that was influenced by inflation or some of replacement. You have not depreciated it at all right through the [illegible].

Mr. [illegible]: I am going to deal with that very fully, that consideration in your brief, at the proper time, Mr. [illegible].

Mr. [illegible]: I see, right. That is the way your table is set up as the present time survey.

Mr. [illegible]: Yes, and I think properly set up. Then, another [illegible], I submit --

"--of the proposition in regard to earnings is that it takes into consideration only the earnings of the holders of the common stock, or in fact of the original common stock. Even if the focus is proper as the ratio of earnings of the original common shareholders to their investment which [illegible] sought to establish were correct", which we do not [illegible], "[illegible] It is the earnings of the company as a whole that must be considered, "looked at either in relation to the total capital invested, or more properly in relation to the value of the investment, [illegible]

"particular group of the holders of that stock." In support of that contention I would like to say this, my lord, that I feel it is untenable --

"to attempt to point to the profits alleged to have been made by the holders of one class of stock, or the holders of onepart of that class, as a guage of the earnings of an industry or of a particular company. Capital structures vary from company to company and from time to time."

We have seen evidences of that lately. There is so much refinancing of bonds going on, for instance. That is an indication of the variation of capital structures. Some of the capital may be in the form of bonds and some in the form of preferred stock and some in the form of common.

"Internal arrangements arising from the capital structure of a company respecting the sharing of its earnings between the various joint investors in that company do not affect the amount of the profits or earnings and are not material to any determination" in which this Commission is engaged, it seems to me. To illustrate what I mean by that, my lord, if we attempted to use the alleged earnings on the common stock, or on a portion thereof, or the alleged profits made by the common stockholders, or any group of them, if that were a suitable method of measuring earnings as a guide to the measure of protection to be afforded then we would have to classify the companies engaged in the industry in accordance

with the various types of capital structure of these companies and devise a separate tariff for each one; so I think that shows the fallacy of attempting to use that fallacious yardstick as an indication for the measure of protection to be afforded.

Now, my lord, in calculating the amount of the capital invested, as I have pointed out, it is, of course, necessary to include therein all the earnings or profits which have been left in the business by the shareholders instead of being distributed, and of course you must also treat those on the other side of the ledger as earnings earned for the shareholders, as part of the return.

Exhibit 917, while it apparently admits that we must include in the amount of the investment capital or profits -- at least, I mean in the amount of the investment profits which have been left in instead of being distributed apparently it makes a distinction between those profits which were left in the business and shown in the books of the company, and profits which are alleged to be hidden profits, if they do exist, as being overcharges for depreciation or betterments charged to repairs.

MR. McRUER: Now, my friend is quite mistaken on that. In the first place we calculated this in two ways. One was by a complete study of each company of the leading companies of how they got along for some long time.

MR. HEWARD: I am only dealing here with that part of exhibit 917 which deals with my particular

with the various types of capital structure of these companies and levies a separate tariff for each one; so I think that shows the fallacy of attempting to use that fallacious yardstick as an indication for the measure of protection to be afforded.

Now, my lord, in calculating the amount of the capital invested, as I have pointed out, it is, of course, necessary to include therein all the earnings or profits which have been left in the business by the shareholders instead of being distributed. Now, of course you must also treat those on the other side of the ledger as earnings earned for the shareholders as part of the return.

Which brings, while it unnecessarily marks that as most trouble in the amount of the investment capital or profits -- at least, I mean in the amount of the investment profits which have been left in instead of being distributed currently, it makes a distinction between those profits which were left in the business and shown in the books of the company, the profits which are allowed to be hidden profits, if they do exist, as being overcharges for depreciation or betterments charged to revenue.

MR. MORRAH: Now, my friend is quite mistaken on that. In the first place we calculated this in two ways. One was by a complete study of each company of the leading companies of how they act along for some long time.

MR. [illegible] I am only dealing now with my part of exhibit 217 which deals with my [illegible]

client.

MR. McRUER: Then, my friend says it admits that we must take the profits that were left in the business as part of the capital. When we prepare a schedule we are not admitting any particular argument by the preparation of the schedule. We simply show what was the case in the preparation of that. What I said, and I said repeatedly that I am only prepared to admit that the reasonable profit that is left in the business, or a share of the reasonable profit that is left in the business, ought to be considered as capital on which the investor is entitled to a return in the study of the sufficiency of the tariff.

MR. HEWARD: I say --

MR. McRUER: Now, I certainly challenge very strenuously that the share of the profit that was left in the business, in this company, was a share of a reasonable profit. It was in excess of a reasonable profit.

MR. HEWARD: Your reason then for deducting on page 12 of exhibit 917 and page 13, where you give the percentage of net revenue from trading applicable to the common share equity employed in operations, you take the year 1927 and you say that is 31.3%, and in establishing that --

MR. McRUER: We are just showing the fact there, that is all.

MR. HEWARD: When you do that --

MR. McRUER: Because you see the position we are in in the preparation of these statements; we have been

Answer.

Mr. McTAGGART: Then, my friend says it admits that we must take the profits that were left in the business as part of the capital. Then we propose a schedule we are not admitting any profits for amusement by the preparation of the schedule. We simply show what was the case in the preparation of that. Then I said and I said repeatedly that I was not prepared to say that the reasonable profit that is left in the business, or a share of the reasonable profit that is left in the business, ought to be capitalized on which the interest is capitalized to a return in the study of the satisfactory of the tariff.

Mr. ROBINS: I say --

Mr. McTAGGART: I say unmeaningly that the share of the profit that was left in the business, in this company, was a share of a reasonable profit. It was in excess of a reasonable profit.

Mr. ROBINS: Your reason then for introducing on page 12 of exhibit 917 and page 18, where you give the percentage of net revenue from trading applicable to the common share equity employed in operations, you have the year 1907 and you say that is 11.1%, was in establishing that --

Mr. McTAGGART: We are just showing the fact there, that is all.

Mr. ROBINS: When you do that --

Mr. McTAGGART: Because you are the position we are in in the preparation of these statements; we have been

met with this fact that Mr. Kellock says it ought to be considered what earnings you get on the common share equity. You say it ought to be considered on the capital employed in operations. I say that is right, after you have studied how the capital employed in operations has been created, but because we have prepared both ways we cannot say that we admit any particular thing. We have done our best to show the whole picture and have been scolded like everything from the other branch of the industry for doing it.

MR. HEWARD: I am not scolding; I am just trying to make clear, Mr. McRuer, what your statement means because it rather shocked me that in establishing the equity behind the common shares they have, in this exhibit 917 on page 12, knocked out of the picture in the second line what is called "inflation in book value of the assets", amounting to $12,000,000.

MR. McRUER: Yes, because we deal with that in an entirely different statement, and if we put it in we would have to take it into profits too.

MR. HEWARD: Yes, and you do take it into profits.

MR. McRUER: No.

MR. HEWARD: Pardon me, but you do take it into profits, right on page seven. You say approximate surplus value of our plant provided by over-depreciation and excessive charges to our operations for equipment, repairs, etc., on page seven as $17,000,000.

MR. McRUER: Oh yes, but--

MR. HEWARD: And then, approximate profits earned

met with this fact but Mr. Ludlow says it ought to be considered as I explained yet on the common share equity. You say it ought to be considered on the capital employed in operations. I say that is right, rather you have studied how the capital employed in operations has been created, but because we have preferred both ways we cannot say that we admit any particular thing. We have done our best to show the whole picture and have been confused like everybody else by reason of the intensity for doing it.

Mr. Hanna: I am not criticizing; I do not think it was fair, Mr. Chairman, that you [illegible] because it rather showed me that in considering the equity behind the common shares they have, in this exhibit XIV on page IX, knocked out of the figure in the second line what is called "inflation in book value of the assets", according to the [illegible].

Mr. Lucas: Yes, because we don't like that in entirely different statements, and if we put it in we would have to take it into profit too.

Mr. Hanna: Yes, and you do take it into profit, [illegible].

Mr. Lucas: Yes, but you do take it into profits, at the top page seven. You say supposing the market value of our plant provided by over-depreciation and excessive charges to our operations for equipment repairs, etc., on page seven as $17,000,000.

[illegible]

Mr. Hanna: [illegible]

during period on common stock are $45,000,000, and that is included in that.

MR. McRUER: Yes, but that is not taken into the $26,000,000, is it?

MR. HEWARD: It is taken into --

MR. McRUER: No, no.

MR. HEWARD: It is in the $45,000,000 down below.

MR. McRUER: I say we deal with that in a separate statement because it was in the nature of what I said it was, a secret reserve of profit. We cannot attribute it to any one year; we cannot distinguish from it,-because the records have been kept in such a way,-we cannot distinguish from it what was natural accretion in value and what was profit, but by process of elimination and argument we can get down pretty close that there was fourteen or fifteen million dollars of a secret reserve of profit. Now, if we could take that -- if the books were kept in such a way that we could just say "here it is", we could have distributed it as to profit in the proper years, but they do not just tell us that on the records.

MR. HEWARD: WE say, my lord --

MR. McRUER: We differ on that.

MR.HEWARD: Absolutely.

MR. McRUER: But the mere fact it is not shown in 1926 --

MR. HEWARD: There is no invidious accusation, Mr. McRuer. We differ. It is a matter of debate on which we have very strong views as to just the correct way of showing it. There is nothing in-

during period on common stock was $46,000,000, and that is included in that.

MR. MORRIS: Yes, but that is not taken into the $20,000,000, is it?

MR. [illegible]: It is taken into --

MR. [illegible]: [illegible].

MR. [illegible]: It is in the $46,000,000 case also.

MR. MORRIS: I say we deal with that in a separate statement because it was in the nature of what I call it was, a secret reserve of profit. We cannot apportion it to any one year; we cannot distinguish from it, because the records have been lost in such a way, we cannot distinguish from it what was actual accretion in value and what was profit, but by process of elimination and judgment we can get down pretty close that there was fourteen or fifteen million dollars of a secret reserve of profit. Now, if we could take that -- if the books were kept in such a way that we could just say there it is, we could have distributed it as to profit in the proper years but they do not just tell us that on the records.

MR. [illegible]: Why, my lord --

MR. [illegible]: We differ on that.

MR. [illegible]: [illegible].

MR. [illegible]: [illegible] in 1926 --

MR. [illegible]: [illegible].

MR. [illegible]: We differ. It is a matter of debate on which we have very strong views as to just the correct way of showing it. There is nothing in-

vidious about it.

MR. McRUER: I am not suggesting that.

MR. HEWARD: The point I make is this; if there was an extra profit of $17,000,000 resulting, as my friend contends, from over-depreciation then, if that profit was there, if it has not been paid out it has been left in, and if it has been left in it should be added to the capital.

MR. McRUER: And the profits should be added from year to year to the earnings.

MR. HEWARD: It should be added to the capital and in setting up the capital he deducts $12,000,000 which is part of the write-up -- which he claims is write-up, which he claims is write-up.

THE COMMISSIONER: He claims that is the inflation.

MR. HEWARD: Inflation; in other words, he claims that part of it represents intangibles at the outset, as I understand it, and the other represents write-up.

MR. McRUER: That is what Mr. Glassco said it was.

MR. HEWARD: Yes, and he says that is inflation, my lord. I do not admit that as being inflation. Inflation sounds as if it was blown up improperly. If it means just simply it was increased value I accept it. But the point is instead of taking off $12,000,000 he should have added $17,000,000. No, I beg your pardon; instead of taking off $12,000,000 he should have left it in and added $5,000,000 if his statement on page one is correct. However, the matter is not of importance because I propose to show that --

THE COMMISSIONER: You mean page seven; you said

vidions about it.

Mr. Smith: I am not arguments that.

Mr. Fraser: The point I make is this; if there was an extra profit of $17,000,000 mentions, as my friend contends, from over-capitalization then, if that profit was there, if it has not been paid out it has been left in, and if it has been left in it should be added to the capital.

Mr. Smith: And the profits should be added from year to year to the capital.

Mr. Fraser: It should be added to the capital and in setting up the capital he deducts $12,000,000 which is part of the write-up -- which he claims is write-up, which he claims is write-up.

THE CONFERENCE: He claims that is the inflation.

Mr. Fraser: Inflation; in other words, he claims that part of it represents intangibles as the assets as I understand it, and the other represents write-up.

Mr. Smith: That is what Mr. Clarke said it was.

Mr. McLaren: Yes, and he says that is inflation, my lord. I do not admit that is being inflation. Inflation sounds as if it was blown up improperly. If it means pure simply it was increased value I accept it. But the point is instead of taking off $12,000,000 he should have added $17,000,000.

Mr. I say your pardon; instead of taking off $12,000,000 he should have left it in and added $5,000,000 if his statement on page one is correct. However, the matter is not of importance because I propose to show that

page one.

MR. HEWARD: Well, I mean page seven, my lord. It is the old unfortunate condition that we had during the evidence when we numbered our pages in the folder that was given us which was only a partial folder and then we have to reconcile them with the original numbering. Now, my lord, I don't know whether you want to recess at this moment because I am going to start on another branch.

THE COMMISSIONER: Well, we may as well do it now. It doesn't make any difference.

-- The Commission adjourned for a short recess.

(page 17675 follows)

-- After recess:

MR. HEWARD: Now, my lord, I am going on to discuss this question. Commission Counsel have admitted that the value of the investment is at least as high as shown on the books of the Dominion Textile Company and in fact, using an insurance appraisal, they have claimed that it is higher - the insurance ---

THE COMMISSIONER: You say the value of the investment?

MR. HEWARD: The value of the net assets behind the investment.

THE COMMISSIONER: I am taking it so far that between you and Mr. McRuer you have three undetermined factors. One is the value of the investment, the other is the real profit and the third is what is a reasonable profit. Those are the three.

MR. HEWARD: I am going to deal first of all with the question --- what I mean by the value of the investment, as I have explained, is the value of the net assets of the company lying behind the investment, and I think the investment that should properly be considered there, as I have said, is the bonds, preferred and common stock but eliminating the bank loans. But we have shown what we contend the value of the investment is lying behind this---

THE COMMISSIONER: You mean the value of the company's assets?

--- Cross-examination

MR. HOWE: Now, my lord, I am going on to discuss this question. Dominion Counsel have contended that the value of the investment in the Union on page 2 shown on the books of the Dominion Textile Company and in fact, being an insurance appraisal, they have claimed that it is higher - the insurance ---

THE COMMISSIONER: You say the value of the investment?

MR. HOWE: The value of the net loss is based on the investment.

THE COMMISSIONER: I am taking it so yet that now you are in. Rather you have three underlying factors, one is the value of the investment, the other is the real profit and the third is that in a reasonable period. Those are the things.

MR. HOWE: I am going to deal first of all with the question --- what I mean by the value of the investment, as I have explained, is the value of the net assets of the company lying behind the investment, and I think the investment that should properly be considered there, as I have said, is the grade, market and common stock out eliminating the bank loans. But we have shown that we contend the value of the investment ---

THE COMMISSIONER: Are you, you claim it has

MR. HOWE: Yes

MR. HEWARD: Yes, the net value of the company's assets represented by these particular securities, the equity behind those securities. Now, they have admitted that the value of our physical assets is at least as high as shown by our books and they go even further and they say there is an insurance appraisal in 1936 which shows it to be higher. But they have made the claim that there has been excessive depreciation and improper charges of betterments to operations by the Company and that therefore the company ---

THE COMMISSIONER: All that turns on the second factor, as to what really were your profits. Mr. McRuer says they are much lower than you show.

MR. HEWARD: Yes, and they say therefore your profits are considerably larger than those shown on your books, and in support of this contention they refer to Exhibit No. 917 with which I have just dealt, but I submit that the cross-examination of the Commission in that regard show that the contention contained on page 7 of the Exhibit, that there was $17,265,728.17 of what is called approximate surplus values in plant provided by over-depreciation and excessive charges to operation for equipment repairs, etc.

THE COMMISSIONER: You are on Exhibit 917?

MR. HEWARD: Yes, page 7 of Exhibit 917, on the table called "Summary of Operation 1905 to 1936," we have a contention that there are approximate surplus values in the plant which were provided by over

depreciation and excessive charges to operations for equipment, repairs, etc. and that those amount to $17,265,728.17. You see the figure I am referring to, my lord?

THE COMMISSIONER: Certainly, that is the figure that Mr. McRuer says should be added to your profits.

MR. McRUER: I deal with it in two ways in my brief and approach it from two angles and get about the same results.

MR. HEWARD: Yes, I am going to deal with both those methods. Now, it will be noted, my lord, that in endeavouring to establish this figure, Exhibit 917, page 7, did say by taking the difference between the depreciated book value on a cost basis of the Company's assets and the approximate present depreciated value of the Company's assets taken from the insurance appraisal---

THE COMMISSIONER: Would you please repeat that?

MR. HEWARD: The exhibit endeavoured to establish this figure of $17,000,000 odd by taking the difference between the depreciated book value on a cost basis of the company's assets as shown on the company's books which he says is $4,917,904.83.

THE COMMISSIONER: Where does he use that figure?

MR. HEWARD: On page 7, just above the $17,000,000, and he deducts that from the approximate present depreciated value of Company's assets taken from the insurance appraisal, $22,183,633 and he says that the

depreciation and excessive charges to operating for equipment, repairs, etc. and the total amount is $17,885,728.17. You see the figure I am referring to, my lord?

THE COMMISSIONER: Certainly, but is the figure that Mr. Bonner says should be added to your profits.

Mr. Jones: I deal with it in two ways in my brief and approach it from two angles and get about the same results.

Mr. Bonner: Yes, I am going to deal with both those methods. Now, it will be noted, my lord, that in endeavouring to establish this figure, which is MY, page 7, you say by taking the difference between the depreciated book value on a cost basis of the company's assets and the approximate present depreciated value of the company's assets based from the insurance appraisal---

THE COMMISSIONER: Could you please repeat that?

Mr. Bonner: The auditor endeavored to establish this figure of $17,885,728 and by taking the difference between the depreciated book value on a cost basis of the company's assets as shown on the company's books which he says is $4,317,904.85.

THE COMMISSIONER: Where does he use that figure?

Mr. Bonner: On page 7, just above the $17,885,728, and he deducts that from the approximate present replacement value of Company's assets from the insurance appraisal, $22,203,633 and he says that he

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difference of $17,265,728.17 represents surplus value in plant provided by over-depreciation and excessive charges to operations for equipment,repairs, &c.

Now, I think I should just mention in passing that I do not admit the justifiability of taking as the real value of the company's assets an insurance appraisal made for a particular purpose by insurance underwriters, that particular purpose being to establish the maximum value to which the Company's assets could be insured.

MR. McRUER: That is not what the appraisal says .

MR. HEWARD: It says the insurable value - you read it yourself, insurable or burnable. Now, there are a lot of things that have to be taken into account there it seems to me. One is the fact that in order to replace that machinery in a hurry, if part of it was burned, the company might have to pay more than would have to be paid if it was done in orderly fashion during construction of a mill.

MR. McRUER: I do not think the words "Burnable" value" is in that.

MR. HEWARD: The important point is that it is the highest amount for which that company will insure it, the highest amount that they will insure it. It does not necessarily mean we will get that if it is burned. We have to prove the actual value and this is a guide perhaps.

THE COMMISSIONER: You say that under the terms of your policy you could not in any event recover more

Litigation by [illegible] Company against Insurance Company in which involves by consequential loss on account of charges to operations for equipment, repairs, &c.

Now, I think I should just mention in passing that I do not admit the justifiability of taking as the real value of the company's assets an insurance [illegible] made for a particular purpose by insurance underwriters that particular purpose being to establish the minimum value to which the company's assets could be insured.

Mr. McKUSH: That is not what the actuarial says.

Mr. [illegible]: It says the insurable value - you read it yourself, insurable or burnable. Now, there are a lot of things that have to be taken into account there it seems to me. One is the fact that in order to replace that machinery in a hurry, if part of it was burned, the company might have to pay more than would have to be paid if it was done in orderly fashion during construction of a mill.

Mr. McKUSH: I do not think the words "burnable value" is in that.

Mr. [illegible]: The important point is that it is the highest amount the value that company will insure it, the highest amount that they will insure it. It does not necessarily mean so will get that if it is burned. We have to prove the actual value and take is a value [illegible].

Mr. McKUSH: Yes, by that mean the [illegible]

than that.

MR. HEWARD: We could not recover more than that, no. We do not insure for more than that.

THE COMMISSIONER: The usual thing is in case of a fire you get your actual loss but you say even if your actual loss exceeded this figure you could not get more than this figure - this is the maximum?

MR. McRUER: There is nothing in the appraisal suggests that.

MR. HEWARD: Well, we might explore that.

MR. McRUER: Mr. Whiteley has gone to get the appraisal. It is quite definite about that. It has nothing to do with the insurable value. It is appraisal of the value of the plant---

MR. GORDON: Oh no.

THE COMMISSIONER: It will speak for itself.

MR. McRUER: Mr. Whiteley has gone down for it.

MR. McRUER: It says:

"This Insurance Valuation of your plant has been made at your request by the Appraisal Division of the Factory Mutual Insurance Companies. It is intended to show in a concise way the insurable (or burnable) value of the property covered by your policies and is based on replacement costs less depreciation."

THE COMMISSIONER: If it is the valuation taken on that basis, replacement costs less depreciation, we know what it is and I do not see how you can quarrel with it.

MR. McRUER: "The abbreviated form does not denote a lack of thoroughness in arriving at values, but rather an attempt to eliminate minor detail and description not essential from an insurance standpoint.

In estimating your values, the latest available data on Buildings and Equipment has been used in conjunction with our experience covering a period of over twenty-five years in determining costs and depreciation. The prices obtained from building contractors in your vicinity and from the manufacturers of your class of equipment are constantly reviewed and periodically brought up to date. We have not attempted to make an appraisal of Stock and Supplies but have accepted your inventory figures as you are in a better position to determine the true value because of fluctuations of both quantity and cost.

This appraisal is held confidential and while primarily its purpose is to determine the amount of insurance required, it should also be of considerable value in the event of a serious loss because actual evidence might be destroyed, yet it would give you an inventory of your equipment. It should be understood, however, that an appraisal is never binding on the assured nor the insurance companies since all adjustments of losses must be made in accordance with the

statutory conditions of the standard form of policy which your State obliges the insurance companies to use, namely: the actual cash value at the time of the fire with proper deduction for depreciation however caused."

There is something else that I have not referred to. Then there is an explanatory note that I did not read the other day:

"DESCRIPTION OF ITEM" - "Sufficient description is given in each case to identify the unit, but minor details used in establishing the values have been omitted.

VALUE (NEW) OF ONE UNIT, is the estimated replacement cost, based where possible on the manufacturer's prevailing price for a similar unit, regardless of what it may have cost the Assured. When the type is old or obsolete, sufficient deduction has been made to offset the loss in efficiency, but if its manufacture has been discontinued, the value of a comparable unit has been substituted.

COST OF INSTALLATION is an estimate covering freight, cartage and labor necessary to put the unit in operation. In general, it is assumed that all the equipment in a building was installed at one time, and the figure takes this into consideration. Where the equipment is manufactured and installed by the Assured and no freight or

satisfactory conditions or be awarded from of policy which your claim covers the insurance companies to use, namely: the actual cash value at the time of the fire with proper deduction for depreciation whatever caused."

There is something else that I have not referred to, from there is an appendicity note that I did not read the whole thing.

"Construction Cost - Two Thousand dollars, to be given in each case to insurance the unit, but minor details used in actual taking the insurance have been omitted.

Years (Date) of use (Yr), is the estimated replacement cost, based where possible on the manufacturer's overhauling value for a similar unit, regardless of what it may have cost the insured. When the type is old or obsolete, sufficient deduction has been made to allow the loss in efficiency, but if the manufacture has been discontinued, the value of a comparable unit has been substituted.

Cost of Actual Fire is an item to covering freight, storage and labor necessary to put the unit in operation. In general, it is assumed that all the equipment in a building was installed at one time, and the figure takes this into consideration. Where the equipment is manufactured and installed by the insured and no freight or

cartage is involed, the cost of installation is generally considered a part of the value (new) and is not shown.

BARE BUILDING includes construction, plumbing, sewerage, drinking water system, engineers' and architects' fees. It does not include building foundations or other underground work not subject to damage by fire, sprinkler leakage or windstorm," etc.

DEPRECIATION represents the difference in value to a going concern, between the property appraised and a new property of like kind, considering the factors of expired life, physical condition and remaining expectancy of serviceable life."

MR. HEWARD: I think perhaps, my lord, if I might be allowed to read just this clause of this paragraph in a booklet called "Insurance valuations by the Factory Mutuals," which is issued by the inspection department of the Associated Factory Mutual Fire Insurance Company, which are the same people who caused the appraisal to be made. They did the appraisal. It says, "Valuation and loss adjustments."

"To the question, 'Will the Insurance company guarantee to adjust for values as shown in the appraisal?' the answer is 'No,' for such a guarantee would const tute a 'valued form,'

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cartage is involved, the cost of installation is generally considered a part of the value (new) and is not known.

BUILDING includes construction, plumbing, sewerage, drinking water system, engineers' and architects' fees. It does not include building foundations or other underground work not subject to damage by fire, sprinkler leakage or windstorm," etc.

DEPRECIATION represents the difference in value to a going concern, between the property appraised and a new property of like kind, considering the factors of expired life, physical condition and remaining expectancy of serviceable life."

MR. HOWARD: I think perhaps, my lord, if I might be allowed to read just this clause of this contract in a booklet called "Insurance violations by the factory mutuals," which is issued by the inspection department of the Associated Factory Mutual Fire Insurance Company, which are the same people who caused the appraisal to be made. They did the appraisal. It says, "Valuation and loss adjustment.

"In the previous "Fill the Line" case Company contends by higher for values as shown in the appraisal. The answer is 'No,' for

illegal in most states and an agreement which might...."

THE COMMISSIONER: Which is another form. There are cases where the insured and the company can agree on it.

"....the answer is 'No,' for such a guarantee would constitute a valued form, illegal in most states and an agreement which might prove distinctly unfair to either the Assured or the insurance company."

THE COMMISSIONER: That only means that they would be held down to the law which says that the amount recoverable is the actual cash value, that is all that means.

MR. HEWARD: "With such a guarantee in effect, the Assured, forexample, could not be reimbursed for additions and improvements placed on the property after the appraisal was made; if through good judgment in purchasing, the property had increased in value, partial losses could be recovered only to the limit of the figures shown in valuation. In a similar way, it would be unreasonable to expect an insurance company to pay the specified amounts if between the time of the appraisal and the loss, depreciation, obsolescence, or lowered costs had reduced the original value considerably."

illegal in most states and an agreement which might....."

THE COMMISSIONER: Which is another form. There are cases where the insured and the company can agree on it.

"....the answer is 'No,' for such a provision would constitute a valued form, illegal in most states and an agreement which might prove disastrously unfair to either the insured or the insurance company."

THE COMMISSIONER: That only means that they would be paid down to the low which may that be amount recoverable in the second such value, that is all that means.

Mr. McLeod: "Upon such a guarantee in effect, the insurer, forsooth, could not be reimbursed for additions and improvements placed on the property after the original was made; if through good judgment in purchasing, the property had increased in value, partial losses could be recovered only to the limit of the figures shown in valuation. In a family way, it would be unreasonable to expect an insurance company to pay the specified amounts if between the time of the original and the loss, the property underwent alterations, or insured with the intent of making value protecting."

THE COMMISSIONER: Your machinery might become obsolete.

MR. HEWARD: "However, fairness to both parties of the insurance contract is invariably a part of any standard policy, for losses must be paid on the basis of 'actual cash value at the time of the loss.'"

That is what your lordship pointed out .

THE COMMISSIONER: That is to safeguard both parties and to make it clear beyond any controversy in the case of fire you are going to get the actual cash value and nothing more. It may be much less than your appraisal value at the time of the appraisal.

MR.HEWARD: And it says, "Nevertheless, the fact that the appraisal is not binding does not imply that it could not, or would not, be used as a basis of adjustment, for if the valuation proved to be of recent date, with figures approximately correct, they would undoubtedly be considered."

THE COMMISSIONER: No, I am not led astray by the affect of this appraisal on your insurance rights. In view of the basis on which the appraisal was taken why do you dispute its accuracy?

MR. HEWARD: I say it is much more casual.

THE COMMISSIONER: Oh, does not sound to me like anything casual.

MR. McRUER: Took four months to make, spread over four months.

[illegible]: The measure of [illegible] [illegible]

[illegible]?

[illegible]: "Moreover, fairness to both parties of the insurance contract is invariably a part of any insured policy, for losses must be paid on the basis of 'actual cash value at the time of the loss.'"

That is what your lordship pointed out.

The [illegible]: That is to safeguard both parties and to make it clear beyond any controversy in the case of fire you are going to get the actual [illegible] and nothing more. It may be much less than your sentimental value at the time of the appraisal.

[illegible]: As it says, "Nevertheless, the fact that the appraisal is not binding does not imply that it could not, or would not, be used as a basis of adjustment, for if the value thus proved to be of reasonable date, with figures approximately correct, they would undoubtedly be considered."

[illegible]: - I am not led astray by the effect of this appraisal on your insurance figure. In view of the basis on which the appraisal was taken why do you dispute its accuracy?

[illegible]: Because I say it is much more casual.

[illegible]

[illegible]

[illegible] four months to make, spread [illegible]

MR. HEWARD: The Canadian Appraisal Company's appraisal was a very detailed appraisal taking each machine, machine by machine and it occupied ---

MR. McRUER: This is listed machine by machine. There is a stack of books that high.

MR. HEWARD: I understand valuation is not placed on each machine but each group of machine and they take a typical machine.

THE COMMISSIONER: Well, if I find in the course of events that I have to use some figure of the actual value, if I find that later on I have to use some figure to fix the actual value, there is nothing else that I see so far that I can take but this.

MR. HEWARD: The book value which reflects --

THE COMMISSIONER: How much does that amount to?

MR. HEWARD: $18,000,000, a difference of $4,000,000. I just want to point out it is not as accurate an appraisal as was made at considerable time and expense and not so voluminous which, as Mr. Frick, I think it was, stated it reached that high from the floor, in his evidence in Montreal, Mr. Frick, the appraisal man.

THE COMMISSIONER: I can understand that but I suppose there is no limit as to how meticulous and appraisal might be. You can have ten volumes or twenty or one hundred. What I have seen of this and heard of this appraisal here it leads me to think that it is a fair appraisal.

MR. [illegible]: The [illegible] appraisal [illegible] appraisal was a very detailed appraisal taking each machine, machine by machine and it occupied ---

MR. [illegible]: This is listed machine by machine. There is a stack of books that high.

MR. [illegible]: I am [illegible] valuation is not placed on each machine but each group of machine and they [illegible] a typical [illegible].

THE COMMISSIONER: Well, if I find in the course of events that I have to use some figure of the book value, if I find that later on I have to use some figure to fix the normal value, there is nothing [illegible] that I see so far that I can come but this.

MR. [illegible]: The book value which reflects --

THE COMMISSIONER: How much does that amount to?

MR. [illegible]: $10,000,000, a difference of $6,000,000. I just want to point out it is not as accurate an appraisal as was made at considerable time and expense and not so voluminous which, as Mr. [illegible], I think it was, stated it removed that sign from the floor, in his evidence in Montreal, Mr. [illegible], the [illegible] appraisal room.

THE COMMISSIONER: I can understand that but I suppose there is no limit as to how meticulous and [illegible] appraisal might be. You can have ten volumes or twenty or one hundred. What I have seen of this on [illegible] of this appraisal here it leads me to think that it is a fair appraisal.

MR. HEWARD: I am not disputing that it is unfair. I simply say it is not as meticulous as the other one.

THE COMMISSIONER: You seem to have undue fear - when I say "fear" I am not talking in opposition to what is just - I mean tosay, approximately right valuation.

MR. HEWARD: I think it is perhaps more approximate than the other, is perhaps the better way to put it.

THE COMMISSIONER: You mean to say more approximate than your book values.

MR. HEWARD: I mean the other is not approximate- it is exact, that is what I mean.

THE COMMISSIONER: Which is exact?

MR. HEWARD: The appraisal of 1920 and which reflected part of the indicated increase.

THE COMMISSIONER: Whatmakes that appraisal more exact than this insurance appraisal?---

MR. HEWARD: As I understand it, ---

THE COMMISSIONER: I understood from Mr. Gordon's evidence that the Company in making this appraisal was rendering you a service, that is something they were doing for you.

MR. HEWARD: Yes. and done that for particular purpose, to get the maximum insurable value.

THE COMMISSIONER: And I assume they did it properly.

MR. HEWARD: Yes, but I do not think it is necessary for that purpose to do it as thoroughly as the

Mr. HEARD: I am not disputing that it is merely I simply say it is not as conclusive as the other was.

The CHAIRMAN: You seem to have made that - when I say "there" I am not speaking in opposition to what is just - I mean roughly, approximately right value.

Mr. HEARD: I think it is perhaps more approximate than the other, is perhaps the better way to put it.

The CHAIRMAN: You mean to say more approximate than your book values.

Mr. HEARD: I mean the other is not approximate - it is exact, that is what I mean.

Mr. HEARD: The appraisal of 1920 and which reflected part of the indicated increase.

The CHAIRMAN: Notwithstanding that appraisal more than was fair ---

Mr. HEARD: As I understand it, ---

The CHAIRMAN: I understood from Mr. Gordon's evidence that the Company in making this appraisal was rendering you a service, that is something they were doing for you.

Mr. HEARD: Yes, and done that for particular purposes, to get the maximum insurable value.

The CHAIRMAN: And I assume they did it about

Mr. HEARD: Yes, but I do not think it is necessary for that purpose to do it as thoroughly as the

Canadian Appraisal Company did. The Canadian Appraisal Company had a tremendous staff working on it.

THE COMMISSIONER: What was the purpose of their appraisal?

MR. HEWARD: It was on direction from the directorate to give the Company an exact valuation or as exactly a valuation as can be given of the company's physical assets at that time. That was the purpose of that appraisal, my lord.

THE COMMISSIONER: And that put your value at $18,000,000, about.

MR. HEWARD: Well, with subsequent additions at cost.

THE COMMISSIONER: No, I say at tht time.

MR. HEWARD: At that time? Put the gross values new at $30,000,000 and depreciated replacement values at $22,900,000 approximately.

THE COMMISSIONER: And that was in 1920?

MR. HEWARD: Yes.

THE COMMISSIONER: And your present book values are in excess of that.

MR. HEWARD: Our present book values represent, as I understand it, ---

THE COMMISSIONER: You use that as your basis and you have added to that or perhaps taken from it.

MR. HEWARD: What we did was took part of the indicated increase in 1920 and added it to our book values.

Canadian Gypsum Ltd. The Canadian Gypsum Company had a tremendous staff working on it.

THE COURT REPORTER: Just was the purpose of that appraisal?

MR. [illegible]: It was on direction from the directorate to give the company an exact valuation or as exactly a valuation as can be given of the company's physical assets at that time. That was the purpose of that appraisal, my lord.

THE CHAIRMAN: And that put your value at $46,000,000, about.

MR. [illegible]: Well, with subsequent additions as [illegible].

MR. [illegible]: No, I say at that time.

MR. [illegible]: At what time? Put the [illegible] value at $36,000,000 and depreciated replacement values at $46,500,000 approximately.

THE CHAIRMAN: And that was in 1[illegible]

MR. [illegible]: Yes.

THE CHAIRMAN: And your present book value is [illegible] in excess of that.

MR. [illegible]: Our present book values represent, as I understand it, ---

THE CHAIRMAN: You use that as your basis and you have added to that or perhaps taken from it.

MR. [illegible]: That is the [illegible] of the [illegible] Company is then and added it to our book values.

THE COMMISSIONER: I know what you did there. You took $9,800,000. What have you done since that?

MR. HEWARD: Since then put in additions at cost and, of course, have written off depreciation on the original cost of the original assets and original cost of the addition.

THE COMMISSIONER: And you arrive at your present ---

MR. HEWARD: And we arrive at our present figure in that way, $18,000,000 depreciated book value, $18,172,276.11. That will be found on page 4 of Exhibit 1232.

THE COMMISSIONER: Well, that leaves about $4,000,000 between you?

MR. HEWARD: Yes, my lord. But let us assume that in Exhibit 917 they were proceeding on a satisfactory basis and using the values shown by insurance appraisal and I said that there is nothing to establish that the surplus value shown by such an appraisal as compared with the net book value on a cost basis are the results of over-depreciation or charges of betterments to repairs, because that is what we are accused of. We are accused of hiding our profits by making excessive depreciation or by charging betterments to repairs, which amounts to the same thing.

Mr. Glassco in his evidence established that up to 1920 there had been, if anything, a very small under-depreciation. In other words, we depreciated less than we ought to have, "and he stated that he could not

MR. MACDONALD: I know what you did there. You took $9,800,000. What have you done since then?

MR. RANKIN: Since then put in additions at cost and, of course, have written off depreciation on the original cost of the original assets and original cost of the additions.

THE COMMISSIONER: And you arrive at your present

MR. RANKIN: We arrive at our present figure in that way, $13,000,000 depreciated book value, $10,176,470.11. That will be found on page 4 of Exhibit 1404.

THE COMMISSIONER: Well, that leaves about $4,000,000 between you.

MR. RANKIN: Yes, my lord. Put let us assume that an exhibit NIV may have proceeded on a satisfactory basis and using the values shown by insurance appraisal and I said that there is nothing to suggest that the surplus value shown by such an appraisal as compared with the net book value on a cost basis are the results of over-depreciation or changes of betterments to capital, because that is what we are accused of. We are accused of hiding our profits by making excessive depreciation or by charging betterments to capital, which amounts to the same thing.

MR. [illegible] If anything, a very small [illegible] In other words, we depreciated less than we might [illegible] that be small-[illegible]

say whether there has been any over-depreciation between 1920 and the present time, because we have not got an exact appraisal on the same basis as we had in 1920."

MR. McRUER: Of course, Mr. Glassco made it clear that he was only dealing with depreciation and not taking along with it the charges to betterments and repairs.

MR. HEWARD: He said expressly in his evidence that he considered charges of betterments to repairs as being equivalent to depreciation.

THE COMMISSIONER: How do you say that - charges of betterments to repairs?

MR. HEWARD: Yes, if we charge betterments - a betterment ---

THE COMMISSIONER: Does it not all revolve around what you mean as betterment?

MR. HEWARD: Yes. I understand my friend when he used the word betterment in this sense means a betterment which should have been a capital charge, should have been charged to capital, should have represented a capital outlay because otherwise if he does not it is a proper charge to operations if it is not a capital charge.

THE COMMISSIONER: Can you give me a concrete instance of what is meant by this term "Betterment"?

MR. HEWARD: I use it in that sense. I thought my friend meant a betterment which was a capital outlay and which had been improperly charged.

say whether there has been any over-depreciation between 1920 and the present time, because we have not got an exact appraisal on the same basis as we had in 1920.

Mr. NORDLIN: Of course, Mr. Ginsson made it clear that he was only dealing with depreciation and not taking along with it the charges to betterments and repairs.

Mr. [illegible]: He said expressly in his evidence that he considered charges of betterments to repairs as being equivalent to depreciation.

THE COMMISSIONER: How do you say that - charges of betterments to repairs?

Mr. [illegible]: Yes, if we charge betterments - a betterment ---

THE COMMISSIONER: Does it not all revolve around what you mean as betterment?

Mr. [illegible]: Yes. I understand my friend when he used the word betterment in this sense means a betterment which should have been a capital charge, should have been charged to capital, should have represented a capital outlay because otherwise if he does not it is a present charge to operations if it is not a capital charge.

THE COMMISSIONER: Can you give me a concrete instance of what is meant by this term "betterment"?

Mr. [illegible]: I can. It is just another. I think my friend should a different price per a [illegible] and [illegible] depreciation [illegible].

THE COMMISSIONER: What is a betterment? I know what a repair is.

MR. HEWARD: If a wooden floor is replaced by a concrete floor.

THE COMMISSIONER: You call that a betterment?

MR. HEWARD: That would be a betterment to the extent---

THE COMMISSIONER: How do you think that should be chargeable - to capital?

MR. HEWARD: A proportion of that - if you had repaired, perhaps ---

THE COMMISSIONER: Give me a case where you took out wooden floor ---

MR. HEWARD: If you had repaired a wooden floor that would be a repair. Now, if instead of repairing that wooden floor you put in a new concrete floor at a higher cost then the repairs to the wooden floor, the excess over and above the proper charges for repairs to the wooden floor, would be a betterment and should be charged to capital.

THE COMMISSIONER: Well, I can understand that. Now then, apparently Mr. McRuer says that there was a lot of things that were betterments in the way you say and did not charge to capital.

MR. McRUER: I just take their own wording. For instance, just looking now at the annual meeting 31st of May, 1906, of my brief, page 144, I will see just exactly how they put it there. I am reading from page

[illegible] betterment? I know what a repair is.

Mr. [illegible]: If a wooden floor is replaced by a [illegible].

THE [illegible]: You call that a betterment?

Mr. [illegible]: That would be a betterment to the [illegible].

THE [illegible]: How do you think that should be charged - to capital?

Mr. [illegible]: A proposition of that - if you had [illegible] ---

THE [illegible]: Give me a case where you tear out wooden floor ---

Mr. [illegible]: If you had repaired a wooden floor that would be a repair. Now, if instead of repairing that wooden floor you put in a new concrete floor at a vastly cost than the repairs to the wooden floor, the excess over and above the proper charges for repairs to the wooden floor, would be a betterment and should be charged to capital.

[illegible], I am [illegible].

Now then, apparently Mr. [illegible] says that there was a lot of things that were betterments in the way you say and did not charge to capital.

Mr. [illegible]: I just take their own wording. For instance, just looking now at the annual meeting that of day, 1906, of my brief, page 144, I will see [illegible]

5858 of the evidence - this is Chairman's report to the shareholders: "We have spent nearly $2: 0,000 for betterments and repairs," which is practically the same thing.

THE COMMISSIONER: Who says that?

MR. McRUER: The Chairman, and he charges it to operation. That is the year 1906.

MR. HEWARD: Yes, but you remember they did not depreciate in those years, that was their method of providing depreciation to write-off betterment to repairs. Instead of providing a percentage for depreciation they would take a part of their betterments

MR. McRUER: And they kept on doing it and doing it in increasing amounts right straight down through.

MR. HEWARD: They did not start writing off depreciation until---

MR. McRUER: Until 1918 and they kept right on writing off betterments to repairs. Just look at the statement again at page 252:

MR. HEWARD: Your lordship will see from that page that there were no charges to operation for depreciation-

MR. McRUER: Well, I ---

MR. HEWARD: Until 1918. The practice was up to that time to make charges to operations and reserves for depreciation or obsolescent plant and also for betterment.

MR. McRUER: You see my point, we do use their

5 3856 of the evidence - this is Quelgrean's report to the government: "We have spent nearly $40,000 for investigation and testing," which is practically the same point.

THE COMMISSIONER: Who says that?

MR. FORDYCE: The Quelgrean, and he charges it to operation. That is the year 1926.

MR. MCLEAN: Yes, but you remember they did not commence in those years, that was the start making of producing equipment to write-off betterment to reserve. Instead of providing a percentage for depreciation they would take a part of their interest

10 MR. MCKAY: And they kept on doing it and doing it in increasing amounts right straight down through.

MR. HEARD: They did not start writing off depreciation until---

15 MR. MCKAY: Until 1926 and they have kept on writing off betterments to reserve. Just look at the statement again at page 4041:

MR. HEARD: Your Lordship will see from that page that there were no amounts to operation for depreciation

20 MR. MCKAY: Well, I ---

MR. HEARD: Only 1926. Now, gentlemen, up to that time so much amounts to operations and reserve for depreciation or obsolescent plant and also for betterment.

25 MR. MCKAY: You see my point, we do use their

language and then we take it in the year 1917, for instance, the charges for betterments jumped from $108,000 to $412,000, and then the year that they introduced a write-off for depreciation it goes up to $560,000 and then on down the line until it gets up as high as $700,000, and then in addition to that in 1927 they open up a new method of charge and introduced "Charges to operations for equipment," and then the charges to operations for depreciation in 1927 were $1,614,297, to betterments and repairs, as we classify them, $716,000, and then a new charge to operations for equipment, $250,000.

MR. HEWARD: My friend's remarks there are simply repetitions of what are in his factum and also in his argument to date, and I intend to deal with all those particular points that he has brought out in their proper order. I think perhaps we would get along a little faster if I were allowed to approach them in that way and develop my argument here because I am going to deal with all those criticisms that he has made in their proper order.

THE COMMISSIONER: It was you that I think referred just now to this question of betterments and repairs.

MR. HEWARD: Yes, but I said that my friend had said that we had charged betterments to repairs and he says we have done that improperly. I say that betterments charged to repairs are equivalent to depreciation.

language and then we take it in the year 1917, for instance, the charges for betterments jumped from $106,000 to $413,000, and been the year that they introduced a write-off for depreciation it goes up to $500,000 and then on down the line until it gets up as high as $700,000, and then in addition to that in 1917 they open up a new method of charge and introduce "charges to operations for equipment," and then the charges to operations for depreciation in 1917 were $1,414,297, to betterments and repairs, as we classify them, $918,000, and then a new charge to operations for equipment, $1[illegible].

Mr. BRAUN: My friend remarks there are simply repetitions of what are in his Toronto and also in his argument to date, and I intend to deal with all those particular points that he has brought out in their proper order. I think perhaps we would get along a little faster if I were allowed to approach them in that way and develop my argument here because I am going to deal with all those criticisms that he has made in their proper order.

THE COMMISSIONER: It was you that I think referred just now to this question of betterments and repairs.

Mr. BRAUN: Yes, but I said that my friend had said that we had charged betterments to repairs and he says we have done that improperly. I say that betterments charged to repairs are equivalent to [illegible] depreciation.

MR. McRUER: But when they introduced depreciation they went on in increasing amounts.

MR. HEWARD: I will deal with all those points.

THE COMMISSIONER: Anyhow you told me this that when repairs ceased to be repairs, become betterments, you had charged excess value of it to capital.

MR. HEWARD: It should be charged to capital.

THE COMMISSIONER: You told me you have done that.

MR. HEWARD: In the early years when they were not writing off depreciation. Up to 1918 they did not write off depreciation, but what they did was a system from year to year writing off betterments to profits in lieu of depreciation.

THE COMMISSIONER: Yes, I know, but what have you done since 1918 in the case you gave me there of the floor?

MR. HEWARD: We submit we have not charged any betterments to repairs unless we have shown them as such, as depreciation in our books, at any time. Since 1918 we adopted a policy of writing off certain fixed amounts for depreciation without any referance to any particular betterment or any particular repair previous to that time.

THE COMMISSIONER: You must arrive at it on some basis because it varies from year to year.

MR. HEWARD: Yes, it does and I am going to deal with those operations, my lord. As I said, Mr. Glassco said that before 1920 we had under depreciation

Q. But when they introduced depreciation they went on in increasing amounts.

A. Yes. I will deal with all those points.

THE COMMISSIONER: Anyhow you told me with a repairs deemed to be repairs, become betterments, you had charged excess value of it to capital.

A. Yes: It should be charged to revenue.

THE COMMISSIONER: You told me you have done that.

A. Yes: In the early years when they were not writing off depreciation. Up to 1918 they did not write off depreciation, but what they did was a swelling from year to year writing off betterments to profits in lieu of depreciation.

THE COMMISSIONER: Yes, I know, but what have you done since 1918 in the case you gave me the 1918 of the [illegible]

A. No: We would be have not charged any betterments to repairs unless we have shown them as such, as depreciation in our books, at any time. Since 1918 we adopted a policy of writing off certain fixed amounts for depreciation without any reference to any particular betterment or any particular repair previous to that time.

Q. [illegible] You have written it off in a [illegible] fixed amount from year to year.

A. Yes, it does and I am going to [illegible] [illegible], as I said, [illegible]

if anything and that in dealing with depreciation he expressly stated that betterment charged to repairs were equivalent to depreciation. So that he said that taking that all into account we had under depreciation if anything and he pointed out---

THE COMMISSIONER: Who said that?

MR. HEWARD: Mr. Glassco, page 26 of my Brief: "He pointed out, however, in this connection that during the period from 1920 onward the company never wrote off for depreciation more than was permitted by the Income Tax Authorities. They wrote off only about 1.8% on the cost of buildings, and approximately 6% on machinery. These percentage figures were applied to the original cost and not to the written up figures." You see, if we had applied percentage figures to the written-up values we would have got a much larger figure of depreciation and supposing a competitor had bought our plant at the then replacement value that competitor would be entitled by the Income tax authorities to write off, would be permitted to write-off on the basis of the values the cost which he had paid for them, namely, our book values, if he had bought them at our book values. And, again, there has been no proof that betterments have been charged to repairs except where they were charged in lieu of depreciation. The Commission auditor in his examination at page 12851 admitted that he had no

if anything and that in dealing with depreciation
we certainly would have been thought to have
were equivalent to depreciation. So that we said
that values had had some amount of had some
depreciation if anything and be written out---

Mr. Ellis: Mr. Chairman, page 24 of my Brief:
We pointed out, however, in this connection
that during the period from 1929 onward the
company never wrote off for depreciation were
then not permitted by the Income Tax Regulations.
They wrote off only about 1.5% on the cost of
buildings, and approximately on machinery.
These percentage figures were applied to the
original cost and not to the written up figures.
You see, if we had applied percentage figures to the
written-up values we would have got a much larger
figure of depreciation and supposing a competitor had
bought our plant at the then replacement value that
competitor would be entitled by the Income Tax
authorities to write off, would be permitted to write-
off on the basis of the values the cost which he had
paid for them, namely, our book values, if he had
bought them at the land values. So, again, there
was plenty of room for improvement in the Income Tax
Regulations. The point is that we felt we had
complaints of some kind and we felt we had no

idea what amount of the $17,265,728.17 consisted of betterments charged to repairs.

I understand that the Commission auditor had a representative in our office, a Mr. Breckenden, and that he made a thorough examination and could not find anything that should have gone to capital account that was not ---

MR. HOWSON: Oh, excuse me, he did nothing of the kind.

MR. McRUER: Better have that in evidence.

MR. HOWSON: I can show you a list of stuff that he found in your account that should have been capitalized and was capitalized in your cost records and charged off from year to year.

MR. HEWARD: Those are equipment. That is a different matter. Cost records is another thing altogether. However, if I am wrong in those instructions I withdraw them but I was told that that was the case.

MR. HOWSON: That is not correct at all.

MR. HEWARD: "In the third place, the Commission Auditor under cross-examination admitted that the figure of $17,265,728.17 could and might contain several elements other than over depreciation and charges of betterments to repairs, such asthe natural increase in the value of lands over the period of 31 years, the natural increase in the value of buildings during that period and natural increases in the

[illegible]

[illegible] that amount of the $[illegible],[illegible],[illegible].17 consisted of [illegible] charged to repairs.

I understand that the examination auditor and a representative in our office, [illegible], [illegible], [illegible] that he made a thorough examination and could not find anything that would [illegible] that was not ---

[illegible]: Oh, excuse me, he did [illegible] of [illegible] wind.

Mr. [illegible]: Better have that in evidence.

[illegible]: I can show you a list of stuff that is found in your account that should have been capitalized and was capitalized in your book records and charged out from year to year.

[illegible]: Those are equipment. That is a [illegible]. Such records is another thing altogether. However, if I am wrong in those instructions I withdraw them but I am told that this was the case.

Mr. [illegible]: That is not so from at all.

Mr. [illegible]: "In the [illegible] case, the examination auditor under cross-examination admitted that the [illegible] charges of [illegible] to repairs, such as the natural increase in the value or loss when the period of [illegible], the [illegible] value of [illegible] during that period and [illegible] increase in the

values of machinery and equipment. That the market values of lands ---"

THE COMMISSIONER: You mean by additions, I suppose?

MR. HEWARD: No, my lord.

THE COMMISSIONER: Natural increase in value of machinery, you mean additional machinery?

MR. HEWARD: No, natural increase in the value of the machinery.

THE COMMISSIONER: You mean on the market?

MR. HEWARD: Natural increase ---

THE COMMISSIONER: That means the market value, the real value. You buy a machine today at a certain figure and next day find it 50% dearer.

MR. HEWARD: Yes, not that we had put in new machine but that the value of similar machines have gone up:

"That the market values of lands, buildings, machinery and equipment have greatly increased between 1906 and the present time is a matter of common knowledge."

MR. McRUER: Oh, we challenge that in our brief.

MR. HEWARD: All right, I will deal with it.

~~MR. HEWA~~ I submit it is the case anyway and I am going to establish it.

"An example of the extent of such increase is found in the evidence given by Mr. Glassco which shows that between the years 1915 and 1920 the average cost of building a cotton mill and

values of machinery and equipment. Then the market values of land ---"

THE CHAIRMAN: You mean by statutes, I suppose?

MR. [illegible]: Or, or law.

THE CHAIRMAN: Natural increase in value of machinery, are you talking about machinery?

MR. [illegible]: No, natural increase in the value of the machinery.

THE CHAIRMAN: You mean on the market?

MR. [illegible]: ---

THE CHAIRMAN: Don't mean the market value, the real value. You buy a machine today at a certain figure and next day find it has depreciated.

MR. [illegible]: Yes, not that we did put in new machine but here the value of similar machines have gone up.

"Just the general values of land, buildings, machinery and equipment have greatly increased between 1903 and the present time in a matter of [illegible] years.

MR. [illegible]: Is, we challenge that in our brief.

MR. [illegible]: All right, I will deal with it.

---- I submit it is the case anyway and I am going to establish it.

"An example of the extent of such increase is found in the evidence given by Mr. Hargreaves [illegible] between the years 1893 and 1900 the average cost of erecting a [illegible] mill was

equipping it with machinery, reduced to a per spindle basis, increased from $27.28 to $73.05 per spindle."

Your lordship knows what I mean there, - it is not that the spindle actually cost that but the cost of a plant on a spindle basis was $27.28 and at the later period it was $73.05.

THE COMMISSIONER: It is dividing your plant by the number of spindles.

MR. HEWARD: Yes, dividing plant, machinery by the number of spindles. The reason I understand that is done is the number of spindles in a textile plant indicates the size of the plant. Mr. Glassco also stated that:

"and that representative machinery prices at current values each year rose from $4,193 in 1910 to $8,998. in 1920. The rise during that period in mills, machinery and buildings, appears to have been approximately 100% in the replacement values."

from that evidence.

THE COMMISSIONER: We will adjourn now.

-- The Commission adjourned at 12.30 p.M. to resume at 2.30.

--

equipping it with machinery, reduced to a per spindle basis, increased from $27.38 to $72.00 per spindle."

Your lordship knows what I mean there, - it is not that the spindle actually cost that but the cost of a plant on a spindle basis was $27.38 and at the latest [illegible] is now $72.00.

MR. COMMISSIONER: It is dividing your plant by the number of spindles.

Mr. [illegible]: Yes, dividing plant, machinery by the number of spindles. The reason I understand that is that is the number of spindles in a textile plant influences the size of the plant. Mr. [illegible] also stated that:

"and that representative machinery prices at current values each year rose from $4,100 in 1910 to $5,000. in 1920. The rise during that period in mills, machinery and buildings, appears to have been approximately 100% in the replacement values."

from that evidence.

[illegible] - will [illegible] [illegible].

-- The Commission adjourned at 12.30 p.m. to resume at 2.30.

-- The Commission resumed at 2.30 p.m.

Mr. HEWARD: My Lord, you will remember that just before the adjournement I was dealing with Exhibit 917 and the contention made, arising out of that exhibit, that the approximate surplus values in plant provided by over-depreciation and excessive charges to operations for equipment, repairs, etc., amounted in 1936 to $17,265,728.17. I had dealt with several points in that connection. I had pointed out that that amount could and might contain several elements other than over-depreciation and charges of betterments to repairs, such as the natural increase in the value of lands over the period of thirty-one years, the natural increase in the value of buildings during that period, and natural increases in the value of machinery and equipment. I had pointed out that the market values of lands, buildings, machinery and equipment had greatly increased between 1906 and the present time, and I gave an example of the extent of such increase, to be found in the evidence given by Mr. Glassco showing that between the years 1915 and 1920 the average cost of building a cotton mill and equipping it with machinery, reduced to a per spindle basis has increased from $27.28 to $73.05, and that representative machinery prices at current values each year had risen considerably. I will now go on with the brief:

"Of the five elements which the commission auditor admitted might be comprised in the figure of $17,265,728.17 he was unable to state how much was attributable to natural increase in the value of lands, how much was attributable to the natural increase in the value of buildings,

— The Commission resumed at 8.30 p.m.

MR. HOWARD: My Lord, you will remember that just before the adjournment I was dealing with Exhibit 317 and the conversion made, making out of that exhibit, that the approximate overvaluation in plant provided by over-depreciation and excessive [illegible] amounted in 1926 to $17,258,728.17. I had dealt with several points in that connection. I had pointed out that that amount could and might contain several elements other than over-depreciation and changes of betterments to repairs, such as the general increase in the value of lands over the period of thirty-one years, the natural increase in the value of buildings during that period, and natural increases in the value of machinery and equipment. I had pointed out that the market values of lands, buildings, machinery and equipment had greatly increased between 1906 and the present time, and I gave an example of the extent of such increase, to be found in the evidence given by Mr. Gleason showing that between the years 1913 and 1920 the average cost of building a cotton mill and equipping it with machinery, reduced to a per spindle basis has increased from $27.32 to $78.00, and that representative machinery prices at current values each year had risen considerably. I will now go on with the brief:

"Of the five elements which the commission auditor admitted might be comprised in the figure of $17,258,728.17 he was unable to state [illegible] the extent to which [illegible] the value of lands, [illegible] the general increase in the value of machinery

"nor how much to the increase in market values of machinery and equipment. Five elements were admitted as possible and each of them was stated by the Commission/auditor to be an unknown quantity. No satisfactory explanation was given by him of his failure to mention in his description of this figure of $17,265,728.17 only two of the possible five elements of which it might be composed."

I submit, therefore, that the computations on page 7 of Exhibit 917 does not establish that this extra value which the commission auditor finds in our plant, when comparing it with the depreciated cost, that that was due to excessive depreciation or to improper charges of betterments to operation. We find another argument in support of this contention in my learned friend's brief--in support of the contention that the $17,000,000 odd consisted of over-depreciation and excessive charges, or improper charges to operations for repairs and so forth, and therefore consisted of hidden profits which, he says, are not shown on our books. On page 172 of his brief my learned friend makes this statement:

"In the absence of increased values between the time of the capital outlays for plant and machinery and taking of the appraisal values of 1936--"

The COMMISSIONER: That should be "the" taking of the appraisal values.

Mr. HEWARD: I suppose so, My Lord.

"--and the taking of the appraisal values of 1936, there appears to be a secret reserve of profit amounting to $17,265,728.17. If this

"nor how much to the increase in market values of machinery and equipment. Five elements were admitted as possible and each of them was stated by the Commissioner-Auditor to be an unknown quantity. No satisfactory explanation was given by him of his failure to mention in his description of this figure of $47,448,785.17 only two of the possible five elements of which it might be composed."

I submit, therefore, that the computations on page 7 of Exhibit 217 does not establish that this extra value which the commission auditor finds in our plant, when comparing it with the depreciated cost, that it was due to excessive depreciation or to improper charges of betterments to operation. We find another argument in support of the contention in my learned friend's brief--in support of the contention that the $47,000,000 odd consisted of over-depreciation and excessive charges, or improper charges to operations for repairs and so forth, and therefore consisted of hidden profits which, he says, are not shown on our books. On page 172 of his brief my learned friend makes this statement:

"In the absence of increased values between the time of the capital outlays for plant and machinery and taking of the appraisal values of 1926--"

THE COMMISSIONER: that should be "the" taking of the appraisal values.

Mr. McKAY: I suppose so, My Lord.

"--and the taking of the appraisal values of 1926, there appears to be a secret reserve of profits amounting to $47,448,785.17. If this

"is the case, then the amount charged for depreciation, repairs and betterments has been excessive to this extent."

The COMMISSIONER: Each of those two statements is the converse of the other.

Mr. McRUER: Yes.

Mr. HEWARD: Is not one the consequence of the other, My Lord ?

The COMMISSIONER: He finds too much put aside for depreciation and so on, and he says that constitutes a secret reserve of profits.

Mr. HEWARD: He says, "if your plants are worth more to-day than shown on your books, then in the absence of increased values between 1905 and 1936, there is a secret reserve amounting to $17,000,000 odd.

The COMMISSIONER: That is, in the absence of increased values between those two points ?

Mr. HEWARD: Yes, My Lord; that is the point I want to make.

The COMMISSIONER: And you say there is no such absence ?

Mr. HEWARD: I contend that the increased values are there; that is what I hope to establish. In support of his contention my learned friend obtained a letter from the Textile World, which is quoted on pages 175 and 176 of his brief.

Mr. McRUER: Before you leave page 172, has the brief been corrected to insert before the word "appraisal" in the fourth line of the last paragraph the word "1920".

The COMMISSIONER: Are you speaking of the appraisal of 1920 ?

Mr. HEWARD: The 1920 appraisal, yes.

Mr. McRUER: In the third line of the last paragraph that refers to the 1920 appraisal.

The COMMISSIONER: But in the paragraph above that, in the sentence Mr. Heward has just read, that is the appraisal of 1936.

Mr. McRUER: Yes.

Mr. HEWARD: My brief has been corrected.

The COMMISSIONER: So has mine.

Mr. HEWARD: The letter from the Textile World, quoted on pages 175 and 176 of my learned friend's brief, reads:

"Mr. A. S. Whiteley,
Royal Commission of the Textile Industry
National Research Building,
Ottawa. Ont. Canada.

Dear Sir:

Answering your inquiry of November 30, we offer from our information files a few figures on the subject of cotton mill erecting which may be useful to you."

The COMMISSIONER: Before you proceed with that letter, Mr. Heward, I understand that Mr. McRuer's contention is that there was no increase in values between the time of the outlays for plant and machinery and the appraisal of 1936.

Mr. McRUER: I think that is stating it broadly, My Lord. My contention was that if there had been any increase in values between the time the plants were installed or purchased and the year 1936, it had disappeared by reason of a subsequent decrease to the extent of 80 per cent.

The COMMISSIONER: Perhaps you worked that out later ?

Mr. McRUER: It is dealt with in my brief. It

Mr. MOWER: In the third line of the last paragraph that refers to the 1930 appraisal.

The COMMISSIONER: Not in the paragraph above that, in the sentence at. Counsel has just read, that is the appraisal of 1930.

Mr. [illegible]: Yes.

Mr. [illegible]: My brief has been corrected.

The COMMISSIONER: So has mine.

Mr. MOWER: The letter from the Textile World, quoted on pages 175 and 176 of my learned friend's brief, reads:

"Mr. H. S. Whitelaw,
Royal Commission of the Textile Industry
[illegible]
[illegible]

Dear Sir:

[illegible] offer from our information files a few figures on the subject of cotton mill erection which may be useful to you."

The COMMISSIONER: Before you proceed with that letter, Mr. Counsel, I [illegible] Counsel's contention is that there was no increase in values between the time of the outlays for plant and machinery and the appraisal of 1930.

Mr. MOWER: I think that is another it brought by Lord. My contention was that if there had been any increase in values between the time the plants were installed or purchased and the year 1930, it had disappeared by reason of a subsequent decrease to the extent of 80 per cent.

The COMMISSIONER: Perhaps you might [illegible] later?

Mr. [illegible]: It is dealt with in my brief. I

went up and came down again and therefore they are pretty well where they started.

The COMMISSIONER: Your contention is that it went up and came down again before 1936 ?

Mr. McRUER: Yes, My Lord.

The COMMISSIONER: And it came back to the level at which it stood previously ?

Mr. McRUER: Not more than twenty per cent greater at any rate, so that on that basis it makes a difference of about $2,000,000 or so. It makes a reserve of profit of $15,000,000 odd.

Mr. HEWARD: I will deal in detail with that contention, which appears at great length on page 177 and following. In the meantime I will read the letter addressed to Mr. Whiteley.

The COMMISSIONER: Whose letter is this ?

Mr. HEWARD: It is from the Textile World, My Lord, a newspaper.

The COMMISSIONER: Is it in Mr. McRuer's brief ?

Mr. HEWARD: Yes, beginning at page 175. I will read the letter:

"Answering your inquiry of November 30, we offer from our information files a few figures on the subject of cotton mill erecting which may be useful to you. This information comes from statements made by manufacturers of machinery men in their reported addresses before conventions or interviews.

In 1917, it was stated that to construct and equip a cotton mill would cost $15 to $20 or more, per spindle.

In 1921, at the height of the post war boom, it was said to cost $80 per spindle to

went up and came down again and therefore they are pretty well where they started.

The COMMISSIONER: Your contention is that it went up and came down again before 1896 ?

Mr. [illegible]: Yes, [illegible].

The COMMISSIONER: And it came back to the level at which it stood previously ?

Mr. [illegible]: Not more than twenty per cent greater at any rate, so that on that basis it makes a difference of about $2,000,000 or so. It makes a reserve of profit of $16,000,000 odd.

Mr. [illegible]: I will deal in detail with that contention, which appears at great length on page 177 and following. In the meantime I will read the letter addressed to Mr. Whitney.

The COMMISSIONER: Whose letter is this ?

Mr. [illegible]: It is from the textile World, my lord, a newspaper.

The COMMISSIONER: Is it in Mr. Wolmer's brief ?

Mr. [illegible]: [illegible] page [illegible]. I will read the letter:

"[illegible]

We offer free our information files a few figures on the subject of cotton mill engineering which may be useful to you. This information comes from statements made by manufacturers of machinery men in their reported addresses before conventions or interviews.

In 1897, it was stated that to construct and equip a cotton mill would cost $15 to $20 [illegible].

In 1901, at the height of the post [illegible] boom, it was said [illegible] per spindle to

"erect and equip a new cotton mill.

In 1934, it was said to cost from $45 to $50 per spindle to erect and equip a cotton mill, of which sum approximately $25 was for machinery.

We hope that this information is of some use to you and thank you for the opportunity of serving you.

Yours very truly

WILLIAM B. DALL

Managing Editor,
TEXTILE WORLD."

It will be noted that the figures are not carried beyond 1934 in this letter. That was the last information given in that letter, and in an endeavour to obtain the figures as of 1936 Messrs. Clarkson, Gordon, Dilworth & Nash wrote to the Textile World on January 22, 1937, a letter of which I have a copy. It does not appear in the brief. We did not know of this letter until after my brief had been printed and filed.

Mr. McRUER: When was the letter written ?

Mr. HEWARD: I will give you a copy of it.

Mr. McRUER: But what is the date of it ?

Mr. HEWARD: January 22, 1937. The letter reads:

"William B. Dall, Esq., Managing Editor,
Textile World,
330 West 42nd Street,
New York.

Dear Sir:

Our attention has been drawn to a letter of yours dated 2nd December, 1936, addressed to Mr. A. S. Whiteley, the secretary of the Royal Commission on the textile industry. In this letter you refer to the cost of erecting and equipping a cotton mill, which you suggest was

"erect and equip a new cotton mill.

In 1924, it was said to cost from $45 to $50 per spindle to erect and equip a cotton mill, of which sum approximately [illegible] was for machinery.

We hope that this information is of some use to you and thank you for the opportunity of [illegible].

Yours very truly

[illegible]

Engineering Editor,
TEXTILE WORLD.

It will be noted that the figures are not carried beyond 1924 in this letter. That was the last information given in that letter, and is an endeavour to obtain the figures as of 1930 Messrs. Clarkson, Gordon, Dilworth & Nash wrote to the Textile World on January 24, 1927, a letter of which I have a copy. It does not appear in the brief. We did not know of this letter until after my brief had been printed and filed.

Mr. [illegible]: When was the letter written?

Mr. [illegible]: I will give you a copy of it.

Mr. [illegible]: But what is the date of it?

Mr. [illegible]: January 24, 1927. The letter reads:

[illegible]
Textile World,
[illegible]
New York.

Dear Sir:

Our attention has been drawn to a letter of yours dated December, 1930, addressed to Mr. [illegible], Whitelaw, the secretary of the Royal Commission on the textile industry. In this letter you refer to the cost of erecting and equipping a cotton mill, which you suggest was

"$80 per spindle in 1921 and from $45 to $50 per spindle in 1934.

If it would not be too much trouble we would greatly appreciate your advising us what the approximate per spindle cost in the United States would be in the year 1936. We are under the impression that costs increased between 1934 and 1936 but have no available statistical compilation to which we may refer.

Your cooperation in this matter will be greatly appreciated. We might say for your information that we have been retained by the textile industry in Canada to assist counsel in its representations to the above-mentioned royal commission.

Yours faithfully,

CLARKSON, GORDON, DILWORTH & NASH

(sgd) J.G. Glassco."

It will be noted that the information contained in the letter from the Textile World to Mr. Whiteley, quoted on page 175 of my learned friend's brief, is based on statements made by manufacturers in addresses or interviews, and in order to get more authoritative figures Mr. Gordon telegraphed to Ralph E. Loper Co., specialists in textile cost service, Fall River, Mass. who, it will be observed, are the cost authorities referred to by the Textile World.

Mr. McRUER: And who were employed by the Dominion Textile Company in this commission.

Mr. HEWARD: Yes.

Mr. McRUER: I cross-examined Mr. Loper on what he had to say.

$680 per spindle in 1931 and from $45 to $50 per spindle in 1934.

If it would not be too much trouble we would greatly appreciate your advising us what the approximate per spindle cost in the United States would be in the year 1936. We are under the impression that costs increased between 1934 and 1936 but have no available statistical compilation to which we may refer.

Your cooperation in this matter will be greatly appreciated. We might say for your information that we have been retained by the textile industry in Canada to assist counsel in its representations to the above-mentioned royal commission.

Yours faithfully,

(sgd) J.G. Gardner."

It will be noted that the information contained in the letter from the Textile World to Mr. Whitely, quoted on page 175 of my learned friend's brief, is based on statements made by manufacturers in addresses or interviews, and in order to get more authoritative figures Mr. Jordan telegraphed to Ralph E. Loper Co., specialists in textile cost service, Fall River, Mass. who, it will be observed, are the cost authorities referred to by the Textile World.

Mr. MORROW: And who were employed by the Dominion Textile Company in this connection.

Mr. [illegible]: Yes.

Mr. MORROW: I cross-examined Mr. Loper on what he had to say.

Mr. HEWARD: Mr. Gordon's telegram reads:

"Montreal, Que.,
27th January, 1937.

G. VanBlarcom,
R. E. Loper Co.,
Buffington Building,
Fall River, Mass., USA

Am most anxious obtain speedy and authentic information regarding cost of equipping a cotton mill per spindle in years nineteen fifteen nineteen twenty nineteen twentythree nineteen twentyfour nineteen thirtyfour and nineteen thirtysix or nineteen thirtyfive if nineteen thirtysix is not available stop such information used to be published in the NACMnfrs Year Book up to nineteen twentyfour at least and was compiled by Lockwood Greene and company if you could obtain a continuation of this information from same sources it would be ideal for our purposes but in any case let us have the very best information you can get at the earliest possible moment please address reply to me

G. B. Gordon"

Mr. Gordon received a reply from Ralph E. Loper Company, dated January 28, 1937, attached to which is the schedule therein referred to.

Mr.McRUER: I do not see any reason why, after I had supplied my brief setting out my contention in this reagard, this information should not have been put in my hands after you had received it.

Mr. HEWARD: In developing the argument I wanted to show by this correspondence what the situation is in regard to cost, and I believe that now I have analyzed it I could make exactly the same argument and perhaps a more effective argument if I used only the

Textile World's letter. It is only fair, however, that we should try to get exact information.

Mr. McRUER: But there could have been no object in not giving it to me.

Mr. HEWARD: I hope my learned friend does not think that I was purposedly holding anything back.

Mr. McRUER: No, I am not saying that, but it would have made analysis much easier on our part if we had had this information.

Mr. HEWARD: I have had it analyzed in a table and I will give my learned friend a copy of that.

Mr. McRUER: That is very nice.

Mr. HEWARD: I am sure he will have plenty of time to answer me.

Mr. McRUER: I have such an awful lot to answer now.

Mr. HEWARD: I am glad to hear that.

Mr. McRUER: Oh, I mean fallacious argument.

Mr. HEWARD: Then if you feel that way you need not worry. The letter from Ralph E. Loper Company reads:

"Mr. G. Blair Gordon, Managing Director
Dominion Textile Co., Ltd.
Montreal, Canada.

Dear Blair:

Acting on the request in your night letter of the 27th, I have been in touch with Lockwood, Greene & Co. through a third party regarding the costs per spindle of equipping cotton mills.

I am informed that during 1934 and 1935 the costs were practically identical with those which existed in 1922. In November, 1935, machinery prices advanced 10 per cent above the 1922 level. Previous to this advance the

Mr. Morley: But there could have been no objection to doing it to me.

Mr. McLaren: I hope gentlemen Tolland does not think that I was improperly holding anything back.

Mr. Morley: No, I am not saying that, but it would have made analysis much easier on our part if we had had this information.

Mr. McLaren: I have had it analyzed in a table and I will give my learned friend a copy of that.

Mr. Morley: That is very good.

Mr. McLaren: I am sure he will have plenty of time to answer me.

Mr. Morley: I have such an awful lot to answer.

Mr. McLaren: I am glad to hear that.

Mr. Smith: No, I mean financial answers.

Mr. Morley: When it you feel that way you know

[illegible]

Mr. A. Blair Gordon, [illegible]
[illegible]

The Chairman:

Going on the remarks in your right letter of the 27th, I have been in touch with Lockwood, Greene & Co. Enough a third party regarding the [illegible] of building [illegible].

I am informed that during 1929 and 1930 [illegible] were practically identical with those which existed in 1927. In November, 1930, machinery prices advanced 10 per cent above the last level. Previous to this advance the

"machinery in a print cloth mill represented $27.25 per spindle out of a total of $53.82. I am also informed that this same ratio would exist in other types of mills.

I am enclosing a copy of page 146 of the year book of 1926 of the National Association of Cotton Manufacturers.

I hope that this information will prove of value to you. If not, please do not hesitate to call on us and we shall try toaugment same.

Very truly yours

(sgd)Gil VanBlarcom. --- "

Attached to this letter is the table to which I have referred. I would hesitate to try to read it and will therefore simply ask to have it filed.

Mr. McRUER: I do submit that it is going very far to bring in here, from a man whom I cross-examined, this sort of statement, contradicting our own figures, our trade statistics and indices, and to put it in our hands a month after you have had it.

Mr. HEWARD: Perhaps I am to blame.

Mr. McRUER: It is an intricate table that requires checking up.

The COMMISSIONER: What difference does this correspondence make to the subject ?

Mr. HEWARD: It is rather complex. As a matter of fact, if we had used simply the letter quoted by Mr. McRuer we would have made a much stronger case in our favour than by using this information, but we felt that we should have more accurate information than a mere statement based on conversations with manufacturers and addresses made at conventions. I will now hand in the table.

"machinery in a print cloth mill representing $47,.25 per spindle out of a total of $24.00. I am also informed that this same model could exist in other types of mills.

I am enclosing a copy of page 142 of the year book of 1920 of the national association of Cotton Manufacturers.

I hope that this information will prove of value to you. If not, please do not hesitate to call on us and we shall try to supply same.

Very truly yours

[illegible]

attached to this letter is the table to which I have referred. I would hesitate to try to read it and will therefore simply ask to have it filed.

Mr. Moulton: I do submit that it is going very far to bring in here, from a man whom I cross-examined this morning, correspondence out of his files and put it in evidence, correspondence that I did not have a month after you have had it.

Mr. [illegible]: Perhaps I am to blame.

Mr. Moulton: It is an intolerable thing that correspondence made to the subject ?

Mr. [illegible]: It is rather complex. As a matter of fact, if we had used simply the letter quoted by Mr. Moulton we would have made a much stronger case in our favour than by merely using this information, but we felt that we should have [illegible] information than a mere statement based on conversations with manufacturers and addresses made at conventions.

I will now hand in the table.

"Estimated Costs per Spindle of Four Different Mills, Each of 50,000 Spindles Complete as of January 1 for Years 1910 to 1926 to be Built in New England and Based on Machinery Manufacturers' List Prices.

Source: Lockwood, Greene & Co., Inc.

	Spinning Mills		Spinning and Weaving Mills	
	NO.1	NO.2	NO.3	NO.4
	Hosiery Yarns Carded No. 16	Hosiery Yarns Combed No. 17.5	Print Cloths 38.5 wide 5.35 yard 64 x 60 Carded No. 28.5 Warp Carded No. 39 Filling	Lawns 38.5" 6.40 yard 104 x 112 Combed No. 60 Warp Combed No. 90 Filling
1910	$25.02	$32.15	$28.28	$24.46
1911	24.48	31.46	27.67	23.93
1912	24.55	31.55	27.75	24.00
1913	24.36	31.30	27.53	23.81
1914	23.21	29.82	26.23	22.68
1915	24.14	31.02	27.28	23.59
1916	26.78	34.42	30.27	26.18
1917	33.29	42.78	37.63	32.54
1918	40.07	51.50	45.29	39.17
1919	49.08	63.08	55.48	47.98
1920	64.63	83.05	73.05	63.17
1921	61.37	78.87	69.36	59.99
1922	47.61	61.19	53.82	46.54
1923	45.97	59.08	51.96	44.94
1924	46.76	60.09	52.85	45.71
1925	44.79	57.35	50.44	43.62
1926	41.81	53.73	47.26	40.91

"No. 1. Three storey mill, one storey picker house, four storey storehouse. Yarn made of double roving and finished on cones and in skeins.

No. 2. Four storey mill, two storey picker house, four storey storehouse. Yarn made of double roving and finished on cones and in skeins.

No. 3. Spinning mill four storeys, weave shed one storey and basement and sawtooth roof. Yarns made of double roving and woven on automatic looms.

No. 4. Spinning mill three storeys, weave shed one storey and basement and sawtooth roof. Yarn made of double roving and woven on plain looms.

All buildings of slow-burning construction. Storehouses figured on a six months' supply. All power plants have complete steam turbine unit. The mill heated by steam coils and humidified by individual heads.

The drives are figured as individual motors on pickers, two and four frame for roving and spinning and group drives for balance of machinery.

No. 1. Three storey mill, one storey picker house, four storey storehouse. Yarn made of double roving and finished on cones and in skeins.

No. 2. Four storey mill, two storey picker house, four storey storehouse. Yarn made of double roving and finished on cones and in skeins.

No. 3. Spinning mill four storeys, weave shed one storey and basement and sawtooth roof. Yarns made of double roving and woven on automatic looms.

No. 4. Spinning mill three storeys, weave shed one storey and basement and sawtooth roof. Yarns made of double roving and woven on automatic looms.

All buildings of slow-burning construction, storehouses figured on a six months' supply.

All power plants have complete steam turbine unit. The mill heated by steam coils and humidified by individual heads.

The drives are figured as individual motors on pickers, two and four frame for roving and spinning and group drives for balance of machinery.

Mr. Mc RUER: We are going on indices of the Department of Trade and Commerce, but apparently the information which my learned friend has submitted contends that the cost of machinery is higher now than it was in 1922, which is quite against the other contention.

The COMMISSIONER: Ten per cent higher.

Mr. McRUER: Yes, ten per cent higher than in 1922. I do not know how far that compares with the situation at the time the appraisal was made in 1920.

The COMMISSIONER: That goes back to 1935, as I understand.

Mr. HEWARD: Perhaps if I were allowed to develop the argument we could get along better, and my learned friend could have time to answer it afterwards.

Mr. McRUER: The point is that we are being given a month after you have had it information of this intricate nature. We have been meeting each other every day and I might have had this information so that experts might go over it.

Mr. HEWARD: I had not fully digested the tables until a few days ago.

Mr. McRUER: But we do not want to have them predigested; we want to do a little digesting ourselves.

Mr. HEWARD: If I were not going to use it there would be no necessity of giving it to you.

The COMMISSIONER: Was this sheet sent on ?

Mr. HEWARD: It was forwarded with the Loper Company's letter. The original is attached to the exhibits.

The COMMISSIONER: Where, according to your way of looking at it, do your figures bring us ?

Mr. DE WOLF: We are going on indices of the Department of Trade and Commerce, but certainly the information which my learned friend has submitted contends that the cost of machinery is higher now than it was in 1932, which is quite against the other contention.

The COMMISSIONER: Ten per cent higher.

Mr. DEWOLF: Yes, ten per cent higher than in 1932. I do not know how far that concerns with the situation at the time the aqueduct was made in 1932.

The COMMISSIONER: Just goes back to 1932, as I understand.

Mr. HAVARD: Perhaps if I were allowed to develop the argument we could get along better, and my learned friend could have time to answer it afterwards.

Mr. DEWOLF: The point is that we are being given a month after you have had it information of this intricate nature. We have been meeting each other every day and I might have had this information or that expert might go over it.

Mr. HAVARD: I had not fully digested the matter until a few days ago.

Mr. DEWOLF: But we do not want to have them predigested; we want to do a little digesting ourselves.

Mr. HAVARD: If I were not going to use it there would be no necessity of giving it to you.

The COMMISSIONER: Was this sheet sent on ?

Mr. HAVARD: It was forwarded with the Cooper Company's letter. The original is attached to the [illegible].

The COMMISSIONER: Where, according to your way of looking at it, do your figures begin ?

Mr. HEWARD: I have some more letters to produce from another source and they will give other figures; I want to use them all if I can. The situation is rather a complex one. The figures will show, I submit, that the natural values of the machinery which were there in 1920, according to our books, are still there, that they have not got down far enough to the natural values, even according to the Textile World's letter, to wipe out what we wrote into our books and showed to be there.

Mr. McRUER: You say the natural values ?

Mr. HEWARD: The values indicated by our appraisal are still there. They are not hiding profits by reason of depreciation. It is complicated, and I should like to produce all this information.

The COMMISSIONER: Do you say that as a result of the market price of machinery to-day it is higher at the present time than in 1920 ?

Mr. HEWARD: I contend that it is not lower, according to what we have. It is no lower than the figures we had in our books.

Mr. McRUER: Are you talking about the time the appraisal was made--the insurance appraisal ?

Mr. HEWARD: Not the insurance appraisal.

Mr. McRUER: Oh, well, our figures are not an appraisal up to date.

The COMMISSIONER: You are both working on appraisals; Mr. Heward is going back to the appraisal of 1920, with the subsequent history of the plant, and Mr. McRuer is speaking of the insurance appraisal of 1936.

Mr. McRUER: Yes, My Lord.

The COMMISSIONER: And it is his figures that

Mr. MARTIN: I have some more letters to produce from another source and they will give other figures I want to use them all if I can. The situation is rather a complex one. The figures will show, I submit, what the natural values of the machinery which were there in 1920, according to our books, are still there, that they have not got down far enough to the natural values, even according to the Textile World's letter, to wipe out what we wrote into our books and showed to be there.

Mr. BOROWSKI: You say the natural values?

Mr. MARTIN: The values indicated by our appraisal are still there. They are not taking profits by reason of depreciation. It is capitalized, and I should like to produce all this information.

The MINISTER: Do you say that as a result of the mere price of machinery to-day it is higher at the present time than in 1920?

Mr. MARTIN: I contend that it is not lower, according to what we have. It is no lower than the figures we had in our books.

Mr. BOROWSKI: Are you talking about the time the appraisal was made--the insurance appraisal?

Mr. MARTIN: Not the insurance appraisal.

Mr. BOROWSKI: Oh, well, our figures are not an appraisal up to date.

The CHAIRMAN: You are both wrong on principle; Mr. Hazard is going back to the appraisal of 1920, with the subsequent history of the plant, and Mr. Hazard is looking at the previous appraisal of 1920.

Mr. BOROWSKI: Yes, of 1920.

The CHAIRMAN: And it is by Hazard and

you do not agree with, Mr. Heward ? Are you taking these values as of 1936 ?

Mr. HEWARD: Yes.

The COMMISSIONER: You say they are the same now as in 1920 ?

Mr. HEWARD: I say they were the same in 1936 as in 1920. What I am showing is that the values to-day are substantially above our cost.

The COMMISSIONER: You say that the values of a year ago were substantially above your cost.

Mr. HEWARD: Yes.

Mr. McRUER: That is a different thing.

Mr. HEWARD: I will develop that in a minute; that is what I am getting at. But taking even Mr. McRuer's own letter, it proves my contention when properly analyzed and compared with the figures; it proves my contention that we have not over-depreciated. I should mention, by the way, in regard to the table which is attached to the Loper Company's letter, I am instructed that the figures given in column 3--

The COMMISSIONER: Hosiery yarns ?

Mr. HEWARD: No, My Lord; No. 3 is print cloths. Column 3 of that table is the column which is applicable to mills of the kind operated by my clients.

Mr. McRUER: That seems to show a decline from $73 in 1920 to $47 in 1926.

The COMMISSIONER: The table only goes to 1926.

Mr. HEWARD: It only goes to 1926, but we have information carrying it to 1936.

(17720 follows)

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MR. McRUER: That is a most indefinite statement.

MR. HEWARD: The statements in the Textile World are a bit indefinite too.

MR. McRUER: But we have the cost of the iron and all that sort of thing.

THE COMMISSIONER: In 1982 the figure is $53.82.

MR. McRUER: There had been a decline of 20 between the time the appraisal was made and the time it was put into effect.

MR. HEWARD: Mr. Gordon telegraphed to Sirrine & Company of Greenville, South Carolina, Engineers, for information on the same subject. Unfortunatly I have not got a copy of his telegram here, but we received a reply from them by telegram which I will file. It was later confirmed by letter from Sirrine & Company, dated Greenville, February 10, 1937.

THE COMMISSIONER: I see that this statement makes it 57 in 1936.

MR. HEWARD: 57 in 1936?

THE COMMISSIONER: That is about 10% more.

MR. McRUER: It was 1920 when the appraisal was made.

THE COMMISSIONER: Yes, I know.

MR. McRUER: It had declined.

MR. HEWARD: I would suggest that if we do not deal with this matter piece meal I can perhaps make a little clearer what I am driving at. I am just putting in this information now.

THE COMMISSIONER: And you will turn the lantern on it later?

MR. HEWARD: I will turn the lantern on it a little later on.

5 THE COMMISSIONER: There is no doubt that Mr.McRuer will have something to say in reply.

MR. HEWARD: Yes, my lord.

MR. McRUER: I am not just sitting idle in the meantime, I am listening to my friend, and later he

10 will be followed by Mr. Ballantyne. These documents will have to be looked into, by Mr. Howson. I might want to listen to Mr. Ballantyne too.

THE COMMISSIONER: Is this the last of these

15 documents?

MR. HEWARD: Yes, except that I have summarized them all in a table which I am going to submit to your lordship.

20 THE COMMISSIONER: Had we better put all this in to-day and give it a number, or had we better wait until Mr. McRuer has seen it?

MR. HEWARD: Whichever your lordship thinks best.

THE COMMISSIONER: We might lump it all together

25 and put it in for identification purposes.

MR. HEWARD: Yes, my lord. I have one more document.

THE COMMISSIONER: That is your own compilation?

30 MR. HEWARD: That is my own. I have a letter here which I should like to read into the record.

THE MAGISTRATE: Let you will send my learned
[illegible] Latimer

MR. M[illegible]: I will turn the lantern on it a little
lower on.

THE CORONER'S CLERK: There is no doubt that Mr. Bonner
will have something to say in reply.

MR. [illegible]: Yes, my lord.

MR. MORGAN: I am not just sitting idle in the
meantime, I am listening to my friend, and later he
will be followed by Mr. Williamsons. These documents
will have to be looked at, by Mr. Howson. I might
want to listen to Mr. Williamsons too.

THE CORONER'S CLERK: Is this the last of these
documents?

MR. MORGAN: Well, where that [illegible] Mr.
Bonn all is a thing which I am going to submit to your
lordship.

THE CORONER'S CLERK: Did he secure just all this i
so-day one like is mother, or has he better with
until Mr. Bonner has seen it?

MR. MORGAN: Whenever your lordship thinks best.

THE CORONER'S CLERK: To which long it will together
[illegible]

MR. BONNER: Yes, my lord. I have one more docu-
ment.

[illegible]

MR. [illegible] Mr. Bonner [illegible]
[illegible]

THE COMMISSIONER: This will be Exhibit 1358.

MR. HEWARD: That is all the correspondence and the table?

THE COMMISSIONER: The correspondence with the Textile World, and so on, regarding values.

EXHIBIT 1358: Correspondence with the Textile World and J.E.Sirrine & Company, regarding values.

MR. McRUER: You have not got any supplementary factums that you are going to file?

MR. HEWARD: No.

MR. McRUER: I am glad to hear that.

MR. HEWARD: When I have finished I shall have nothing more to do except sit down and listen.

MR. McRUER: You said you had a table?

MR. HEWARD: I have not really reached it yet in my presentation, but I will hand you a copy. Now I will read the letter from J.E.Sirrine & Company, Engineers, Greenville, South Carolina, dated February 10, 1937 to Mr. G.B. Gordon:

"Dear Sir:

We wish to confirm our telegram of yesterday afternoon replying to your request of the 8th.

The average spindle cost of erecting and equipping standard print cloth mills in the Southeastern section of the United States for the past twenty-five years is as follows:

1912	$27.50
1915	24.75
1918	55.00
1921	70.00
1924	52.50
1927	47.00
1930	47.00
1933	55.00
1936	57.00

You realize, of course, that the cost of the mills will vary somewhat with the exact location of the plant and other local conditions. The cost will also vary with the size of the mill. The figures we have given you are based on a mill of 35,000 to 40,000 spindles. The cost per spindle would be higher in a smaller mill and lower in a larger plant. These figures would include the mill building proper, the textile machinery and auxiliary equipment, and a tenement village. They do not include any land values.

We are enclosing a chart showing the rise and fall of the cost of print cloth mills over the last twenty-five year period. This chart was drawn with straight lines between various periods but you, of course, will realise that there were some periods from year to year where the cost was practically thesame for two or three successive years. We have checked this chart, however, over five year periods and believe that it is substantially correct.

We trust that this gives you the information

you wanted."

Then I have had the information given by the Textile World and in Mr. McRuer ' s brief, and the information given by Lockwood Greene & Company, through Loper, and from J.E. Sirrine & Company, tabulated in the table which I have just given to your lordship.

MR. McRUER: Did Lockwood,Greene & Company give you the figure of 56.54 for 1936?

MR. HEWARD: Through Loper, yes.

MR. McRUER: That is misleading. It says, Lockwood Greene and Loper, but Lockwood Greene did not give that figure.

MR. HEWARD: Loper says they did.

MR. McRUER: Lockwood Greene& Company told Mr.Howson that they could not give it, and Loper said he could get it.

MR. HEWARD: I think you are mistaken there, Mr. McRuer. He says:

> "Acting on the request in your night letter of the 27th, I have been in touch with Lockwood, Greene & Co. through a third party regarding the costs per spindle of equipping cotton mills.
>
> I am informed that during 1934 and 1935 the costs were practically identical with those which existed in 1922. In November 1935 machinery prices advanced 10% above the 1922 level. Previous to this advance the machinery in a print cloth mill represented $27.25 per spindle out of a total of $53.82. I am also informed that this same ratio would exist in other types of mills."

you wanted."

Then I have had the information given by the Postal World and in Mr. Monnet's belief, and the information I have a (illegible) company, received from, and from J.G. Adams & Company, contained in the two which I have just given to your lordship.

Mr. MONNET: Did Lockwood, Greene & Company give you the figure of $2.54 for labor?

A. Yes, Lockwood Greene & Co., yes.

Mr. MONNET: That is misleading. It says, lumber, stone and labor, but Lockwood Greene did not give them (illegible).

A. No, sir: I don't know they did.

Mr. MONNET: Do you know that they could not give it, and I have said no such at it.

Mr. MONNET: I think you are mistaken there, sir, (illegible). Mr. (illegible):

"Acting on the request in your night letter of the 27th, I have been in touch with Lockwood, Greene & Co. through a third party regarding the costs per cubic of erecting mills.

I am informed that during 1924 and 1925 the costs were practically identical with those which existed in 1923. In November 1923 according prices advanced 10% above the 1923 level. Previous to this advance the machinery in a first class mill represented $27.25 per cubic out of a total of $30.00. I am also informed that this same ratio would exist in other types of mills."

MR. McRUER: Lockwood Greene & Company wrote a letter to Mr. Whiteley, dated December 21, 1936, which reads as follows:

"Mr. A.S. Whiteley, Secretary,
Royal Commission on the Textile Industry,
National Research Building,
Ottawa, Canada.

Dear Sir:

Replying to your letter of December 7th, forwarded from our Boston Office, we regret that we have not prepared anything since 1926 for publication on the subject of cost of cotton mill equipment.

Very few complete mills of any importance have been built within the last few years so complete data in the form that you want is not readily available. The information in our files is of a detailed nature, to be assembled for use in specific cases.

The machinery manufacturers and the textile publications might have some interesting figures, and we suggest that you communicate with them if you have not already done so."

MR. McRUER: Mr. Gordon's telegram to Loper was on the 27th of January, and your letter is dated the 28th, so they did not have much time.

MR. HEWARD: In any event those are the figures contained in that letter, and I think they are entitled to as much reliance as the figures contained

Mr. W.S. Nicholls, Secretary,
Royal Commission on the Textile Industry,
National Research Building,
Ottawa, Canada.

Dear Sir:

Replying to your letter of December 7th, forwarded from our Boston office, we regret that we have not prepared anything since 1928 for publication on the subject of cost of cotton mill equipment.

Very few complete mills of any importance have been built within the last few years so complete data in the form that you want is not readily available. The information in our files is of a detailed nature, to be assembled for use in specific cases.

The machinery manufacturers and the textile publications might have some interesting figures and we suggest that you communicate with them if you have not already done so."

M. McCann: Mr. Jones's telegram to hand was on the 27th of January, and your letter is dated the 1st so they did not have much time.

in the Textile World, which were got from the authority they cite.

THE COMMISSIONER: What do you say you arrive at?

MR. HEWARD: The table which I have just filed shows the ~~expense~~ extent of the indicated increase in values over that of the 1915 level as given by each of the three firms above-mentioned.

If we now turn to page 177 of my learned friend's Brief, we see that he has made use in the following way of the information given in the Textile World's letter quoted on pages 175 and 176.

MR. McRUER: Supported by something else.

MR. HEWARD: I deal with that.

MR. McRUER: I know, but you cannot say that I make use of the information in the following way given in the Textile World's letter quoted on pages 175 and 176, because I give two sources of information.

MR. HEWARD: You will see that I have not said how you are dealing with it. All I say there is that you have made use of the information "in the following way". And I think, Mr. McRuer, if you will let me go ahead you will see I am dealing with it quite fairly, and you can point out any mistakes I may make afterwards, but it is awfully hard to argue a very complex thing of this kind if one is constantly interrupted.

MR. McRUER: I know, and I am very sorry to interrupt.

in the Textile World, which were put from the authorit-
ney cite.

THE COURTS: What do you say you arrive at?

MR. MEANS: The table which I have just filed
shows the ~~xxxxxx~~ extent of the indicated increase
in values over that of the 1913 level as given by some
of the three firms above-mentioned.

If we now turn to page 177 of my in-chief Brief, we see that he has made use in the following way of the information given in the Textile World's letter quoted on pages 175 and 176.

MR. MORGAN: Supported by something else.

MR. MEANS: I know, but you cannot say that I made use of the information in the following way given in the Textile World's letter quoted on pages 175 and 176, because I give two sources of information.

MR. MORGAN: You will see that I have not said how you are dealing with it. All I say there is that you have made use of the information in the following way". And I think, Mr. Means, if you will let me go ahead you will see I am dealing with it quite fairly, and you can point out any instance I may have overlooked, but it is awfully hard to argue a very complex thing of this kind if one is constantly interrupted.

MR. MEANS: I know, and I am very sorry to interrupt.

but when you say I deal with the information contained in that letter in a particular way, that is not accurate, and I do not want it to go on the record in that way. If there is anyth reason why you do not want to read what I say in my brief at page 176, I shall be glad to read it. I say:

> "The conclusions of this letter are also borne out by the price indeces prepared by the Dominion Bureau of Statistics in respect to 'Building and Construction' costs and the cost of 'Iron and its products.' The first item, appearing on Page 808 of the Bureau's Year Book, 1936"--

MR. HEWARD: Do you realise what I say here in my notes. I say:

> "We see that he has made use in the following way of the information given in the Textile World's letter.."

I have not said in what way you have used it.

MR. McRUER: You said I made use of it at page 177.

MR. HEWARD: Page 177 is the table. Before I proceed with that tabulation which appears on page 177 I may say that we disagree with the accuracy of certain of the figures contained in the computation on page 177.

THE COMMISSIONER: I understand that this Table of Mr. McRuer's at page 177, is based on the letter that Mr. Whiteley got and also on the indeces of

and I do not want it to go on the record in this way. If there is some reason why you do not want to read what I say in my brief at page 176, I shall be glad to read it. I say:

"The conclusions of this letter are borne out by the price indexes prepared by the Dominion Bureau of Statistics in respect to 'Building and Construction' costs and the cost of 'Iron and its products.' The first item, appearing on page 220 of the Bureau's report, (Cont'd.)

MR. BRUCE: Do you realize what I say here in my notes. I say:

"I see that he has made use in the following way of the information given in the Textile Board's letter.."

I have not said in what way you have used it.

MR. ROBERT: You said I made use of it at page 17?

MR. BRUCE: Page 177 is the table. Before I proceed with that tabulation which appears on page 177 I may say that we disagree with the accuracy of some of the figures contained in the computation on page 177.

THE COMMISSIONER: I understand that this table of Mr. Bruce's at page 177, is based on the letter that Mr. Whiteley got and also on the indexes of

the Department of Trade and Commerce.

MR. HEWARD: Yes.

THE COMMISSIONER: On those two things.

MR. HEWARD: Yes, my lord.

Now, if we turn to page 177 of Commission Counsel's Brief, we find this table, and as I was saying we disagree with the accuracy of certain figures contained in that computation on page 177, but for the purposes of the argument I am making now that is immaterial, as that argument attacks the principles on which the computation is based.

The method adopted on page 177 is to take the assets on hand in 1920 and those acquired later up to 1936 and to deal with them in various groups, reducing each group by certain deductions, for the purpose of arriving at their alleged present value.

The first group is buildings and machinery, as shown by the 1920 appraisal. The value given, $21,334,577. is the depreciated replacement value shown by the 192 0 appraisal. This depreciated replacement value is reduced by 40%, a figure apparently derived from the Textile World's letter, and perhaps from my friend's other indeces as well.

MR. McRUER: Certainly.

MR. HEWARD: The next group consists of plants of the Dominion Cotton Company Limited purchased in 1931. The value given is $2,157,160, the amount which the DTCo paid for them.

We take value of
the Time line
from the line

I submit that to be logical, this plant should have been taken at its depreciated replacement value at the time of purchase and not what DTCo paid for it. However, leaving that point aside, we find that this cost figure is reduced by 40%, which is apparently also derived from the Textile World's letter.

The next group comprises the plant of the Sherbrooke Cotton Company acquired in 1928, where again the figure taken, namely, $1,936,677, is the price paid by the DTCo and not the depreciated replacement value at the time of purchase. This figure is reduced by about 12%, and the basis for that my friend said in argument was the indices.

MR. McRUER: That is right.

MR. HEWARD: The next group consists of additions to buildings, plant and machinery between 1920 and 1938, taken at a figure of $10,113,238, which presumably is intended to be the cost.

MR. McRUER: Yes.

MR. HEWARD: This cost figure of $10,113,238 is reduced by approximately 10%, apparently derived from the Bureau of Statistics Indices referred to on page 176.

MR. McRUER: That is right.

MR. HEWARD: The result of all the deductions made on the bases indicated above is to arrive at a net figure of $34,594,120, which amount Commission Counsel submits as being the present value of the

I submit that to be logical, this plant should have been taken at its depreciated [illegible] value at the time of purchase and not that [illegible] over, leaving that point aside, we find that this most figure is reached by adding, which is admittedly also derived from the Brodie valuation.

The next step complained of is that of the [illegible] plant [illegible], namely, $1,780,677, is the price paid by the L&O and not the depreciated replacement value at the time of purchase. This figure is reduced by about 18%, and the basis for such my friend [illegible] in argument was the Lambees.

Mr. McL.: That is right.

Mr. McKAY: The next step complained of is [illegible] plant and machinery between L&O and [illegible] is a figure of $1,112,[illegible], which presumably is [illegible].

Mr. McL.: [illegible]

Mr. McKAY: This figure of $1,112,[illegible] is reduced by approximately 10%, apparently arising from the amount of depreciation included reduced to [illegible].

Mr. McL.: That is right.

Mr. McKAY: The result of all the deduction made on the basis indicated above is to arrive at the net figure of $[illegible],[illegible],180, which amount Counsel submits as being the present value of the

buildings and machinery.

THE COMMISSIONER: That is $11,000,000 less than the total book value?

MR. HEWARD: Yes, approximately $11,000,000 less, but not less than the total book value.

THE COMMISSIONER: And Mr. McRuer when dealing with the figure of $35,000,000 odd -

MR. McRUER: Before depreciation.

THE COMMISSIONER: He puts the present value at $29,000,000.

MR. HEWARD: These figures are all before depreciation; we treat them as new, because the Textile World figures and other figures that are given for machinery and buildings were for new. My friend then arrives at the figure of $24,594,120 as being what he alleges is the present value of these buildings, and from this figure is deducted first, depreciation charged, which is alleged to amount to $17,875,243, and there is a further deduction then made for sales and disposals alleged to amount to $769,339.

THE COMMISSIONER: That figure of $17,875,243, are these the same figures he refers to more extensively as repairs, betterments and depreciation?

MR. HEWARD: You will notice that while it is $17,000,000 odd, it is not the same $17,000,000 shown in Exhibit 917. It is a slightly different figure because this he says shows the depreciation charged from 1920 onwards. It just happens to be $17,000,000

buildings and machinery.

THE GENERAL MANAGER: That is $11,000,000 less than the total book value?

[illegible] $11,000,000, but not less than the total book value.

[illegible] the figure of $8,000,000 odd -

[illegible].

MR. GENERAL MANAGER: We place the present value at $25,000,000.

MR. MR ANDERSON: These figures are all before depreciation; we treat them as new, because the textile world figures and other figures that are given for machinery and buildings were for new. My friend then arrives at the figure of $[illegible] as being what is alleged is the present value of these buildings and from this figure is deducted first, depreciation charged, which is alleged to amount to $17,[illegible], and there is a further deduction then made for sales and old scrap alleged to amount to $[illegible].

[illegible] are these the same figures he refers to more extensively as repairs, betterments and commutations?

MR. [illegible]: You will notice that while it is $17,000,000 odd, it is not the same $17,000,000 shown in exhibit 17. It is a slightly different figure because this he says shows the depreciation charged from 1890 onwards. It just happens to be $17,000,000

The other he says is excess depreciation.

THE COMMISSIONER: Yes, I know.

MR. HEWARD: Over the 31 years.

THE COMMISSIONER: Yes. I was misled by the similarity of the figures.

MR. HEWARD: As I was saying, further deduction ~~we~~ is then made for sales and disposals alleged to amount to $769,339. The total deductions made on page 177 amount to $18,644,582, and by deducting this from the alleged present value of $24,594,120 shown on that page there is shown an alleged net present value amounting to $5,949,598.

THE COMMISSIONER: With respect to that $18,644,582, depreciation charged, Mr. McRuer says that actually was charged.

MR. HEWARD: Not exactly that. We do not agree on the figures, but they are fairly close. That is the depreciation charged. I am not disputing his figures on that, although our figures are slightly different, but for the purposes of my argument it does not matter.

THE COMMISSIONER: There is only a slight difference.

MR. HEWARD: There are quite material differences in some of the figures, but I am discussing this on the question of principle, and I am assuming his figures to be right for the purposes of my argument, as I said

the other he says is excess depreciation.

THE COMMISSIONER, I know.

MR. MCKAY: over the 31 years.

THE COMMISSIONER: Yes. I was misled by the similarity of the figures.

MR. MCKAY: As I was saying, further deductions is then made for sales and disposals alleged to amount to $169,350. The total deductions made on page 177 amount to $18,644,390, and by deducting this from the alleged present value of $24,304,180 shown on that page there is shown an alleged net present value amounting to $5,245,308.

THE COMMISSIONER: With respect to that $24,304,180, I understand, Mr. Lazier has my recollection was charged.

MR. MCKAY: Not exactly that. We do not agree on the figures, but they are fairly close.

That is the depreciation charged. I am not disputing his figures on that, although our figures are slightly different, but for the purposes of my argument it does not matter.

THE COMMISSIONER: There is only a slight difference.

MR. MCKAY: There are quite material differences in some of the figures, but I am discussing this on the question of principle, and I am assuming his figures to be right for the purpose of my argument, so I will

the total deductions made on page 177 amount to $18,644,582, and by deducting this from the alleged present value of $24,594,120 shown on that page there is shown an alleged net present value amounting to $5,949,598. My friend then compares that figure with the 1936 appraisal figures alleged to amount to $21,128,836, and by deducting the former from the latter Commission counsel arrives at an amount of $15,179,238, which on page 177 he states would fairly appear to be undisclosed profits during the period from 1920 to 1936 created by over-depreciation and betterment and repairs charged to profits, the latter of course being equivalent to over-depreciation. He does not say that is equivalent to over-depreciation, but I make that comment. So he says that $15,179,238 has been over-depreciated in the years from 1920 to 1936.

THE COMMISSIONER: He is back to over-depreciation, betterments and repairs.

MR. HEWARD: Yes, he says created by over-depreciation, betterments and repairs, charged to profits. In other words, he says they are undisclosed profits. That must mean that we have improperly charged them to profits. I do not think he intended repairs as such to be included in that because I think my friend admits that repairs as such are a proper charge.

THE COMMISSIONER: Unless he means that some things were improperly called repairs.

MR. HEWARD: That is what he means, not real repairs.

MR. McRUER: If an old floor wears out and you put down a new one, that is not repairs.

MR. HEWARD: I do not agree with that at all.

MR. McRUER: You charge your old floor to depreciation. What is depreciation for. If you agree that you put down new floors and charged them to repairs, that bears out my argument. I think you misconstrue what repairs are if you say I am wrong on that.

THE COMMISSIONER: You say that if you replace an old wooden floor with a new one, that is a fepair, do you?

MR. HEWARD: That is a replacement, I am instructed.

MR. McRUER: Mr. Gordon was contending otherwise. It is not a question of how Mr. Glasscoe would do it, but that is how the company itself did it., not how Mr. Glasscoe thinks it should be.

MR. HEWARD: If I replace a few planks in a floor, that is a repair, but if I put down a whole new floor, I do not think that is a fepair; it is a replacement.

MR. McRUER: If you keep constantly replacing parts of the floor, then you will eventually have a new floor.

MR. HEWARD: That may be a border-line case. We do not know that that has been done.

We have ~~that~~ digressed a little bit, my lord. I submit then that what my friend really means by this computation on page 177 of his Brief is that this

Mr. [illegible]: That is what we mean, not wall repair.

Mr. Morrison: If an old floor wears out and you put down a new one, that is not repairing.

Mr. [illegible]: I do not agree with that at all.

Mr. [illegible]: You change your old floor to [illegible] that is depreciation for. If you agree that you put your floors are changed them to repairs, that's [illegible] my argument. I think you misunderstand what repairs are if you say I [illegible] that.

Mr. [illegible]: You say that if you replace old wooden floor with a new one, that is a repair, [illegible]

Mr. [illegible]: [illegible] I am interested.

Mr. [illegible]: [illegible]

It is not a question of how a. Disease could do it, but that is how the company itself did it., not how [illegible] [illegible] [illegible].

Mr. [illegible]: If I replace a two planks in a floor, that is a repair, but if I put down a whole new floor, I do not think that is a repair; it is a replacement.

Mr. Morrison: If you keep continually replacing parts of the floor, then you will eventually have a new floor. [illegible] may be a question [illegible]

So not know that that has been done.

We have ~~been~~ digressed a little bit, my lord.

I submit then that what my friend really means by the computation on page 177 of his Brief is that this

$15,179,238, fairly appears to be undisclosed profits during that period from 1920 to 1936, created by over-depreciation and betterments and repairs charges to profits which should not have been charged to profits; in other words that the repairs were not real repairs. That is what he means.

THE COMMISSIONER: Yes, of course. He says that betterments should not be charged up to profits at all, and somebody has said that repairs are not repairs. Mr. McRuer also says that there is a good deal of over-depreciation.

MR. HEWARD: He says that the result of this computatio is to show that we have over-depreciated $15,179,238 in the sixteen years.

THE COMMISSIONER: Taking them out of profits.

MR. HEWARD: If it is over-depreciated, it should not have been charged to profits.

THE COMMISSIONER: It is not altogether over - depreciation. He says you charged up to repairs which were not repairs at all and that you also improperly charged up betterments.

MR. HEWARD: Yes, that is what he says, my lord. He says we have charged the profits that should have been charged to capital.

THE COMMISSIONER: That is the whole story.

MR. McRUER: Just as an example, I have a case here which shows what was done; it is not a hypothetical

$10,172,556, fairly appears to be undisclosed profits during that period from 1930 to 1936, created by over-depreciation and bad debts and reserve charges to profits which should not have been charged to profits in other words that the reserves were not real reserves that is what he means.

THE COMMISSIONER: Yes, of course. He says the bottomness should not be charged up to profits and somebody when said that reserves are not reserves. Mr. Hooper also says that there is a good deal of over-depreciation.

Mr. [illegible] The point of this question is to show that we have over-depreciated $10,172,556 in three years.

THE COMMISSIONER: Taking them out of profits.

Mr. [illegible]: If it is over-depreciated, it should not have been charged to profits.

THE COMMISSIONER: It is not altogether over-depreciation. He says you charged up to reserves and reserves at all and that you also [illegible]

Mr. [illegible] Reserves [illegible] he says we have [illegible] that should have been charged to capital.

THE COMMISSIONER: That is the whole story.

Mr. [illegible]: Just as an example, I have a case which shows what was done; it is not a hypothetical

case at all.

MR. HEWARD: Do you think it would be unfair of me, Mr. McRuer, to ask that I be allowed to develop this? I am just assuming that that is what you say we do. I am not impugning you for saying it.

MR. McRUER: All right.

THE COMMISSIONER: I think probably that would be better.

MR. HEWARD: It is a rather complex question, and it is rather difficult if I am interrupted for me to have to go back and retrace my steps, wasting a lot of my time and everybody else's.

MR. McRUER: There is no doubt of that.

THE COMMISSIONER: You have told me what Mr. McRuer is doing.

MR. HEWARD: And the result that he got.

THE COMMISSIONER: He says that you have $15,000,000 more profits than you have shown.

MR. HEWARD: He says that those profits are hidden; that they should have been charged to capital, that there was over-depreciation.

Now the cost of the building and machinery assets of the Company up to 1920 amounted to $15,517,440 and the appraised replacement value new of those assets as shown by the 1920 appraisal amounted to $30,352,437, so that the increase in values over the Company's cost indicated by the 1920 appraisal was just under 100%.

MR. HOWDEN: Do you think it would be useful of me, Mr. Mosher, to ask that I be allowed to develop this just assuming that that is what you say we do. I am not imagining you for saying it.

MR. MOSHER: All right.

THE COMMISSIONER: I think probably that would be better.

MR. HOWDEN: It is a matter somewhat sensitive, it is rather difficult if I am interrupted for me to have to go back and retrace my steps, wasting a lot of my time and everybody else's.

MR. HOWDEN: There is no doubt of that.

THE COMMISSIONER: You have told me what Mr. Mosher is doing.

MR. HOWDEN: And the result that he gets.

THE COMMISSIONER: He says that you have $16,000,000 more profits than you have shown.

MR. HOWDEN: He says that those profits are hidden that they should have been charged to capital, that there was over-depreciation.

Now the cost of the building and machinery assets of the Company up to 1920 amounted to $16,[illegible], and the appraised replacement value new of those assets as shown by the 1920 appraisal amounted to $[illegible], so that the increase is [illegible] [illegible] by the 1920 appraisal.

THE COMMISSIONER: Is this in your Factum?

MR. HEWARD: No, it is in some notes that I have made.

THE COMMISSIONER: Are these contentious figures?

MR. HEWARD: No, I do not think they are, but I would like your lordship to have them before you because they are very important.

THE COMMISSIONER: What are they?

MR. HEWARD: Cost of the building and machinery assets of the Company up to 1920 amounted to $15,517,440.

THE COMMISSIONER: Up to the time of taking the appraisal.

MR. HEWARD: Up to thetime of taking the appraisal.

MR. McRUER: Is that the actual cost to the Company or the appraised cost?

MR. HEWARD: That is the cost.

MR. McRUER: Does that include the $2,000,000 at the start?

MR. GLASSCOE: The $2,100,000 odd, yes.

MR. McRUER: Which we dispute.

MR. HEWARD: The appraised replacement value new of those assets as shown by the 1920 appraisal amounted to $30,352,437.

MR. McRUER: Where does that come from, from the appraisal?

MR. HEWARD: The 1920 appraisal filed with the Commission. So that the increase in values over the

[illegible] ALBERT: Is this a good Machine?

MR. McKAY: No, it is in some notes that I have [illegible].

THE COMMISSIONER: Are these numbers figures?

MR. HYMAN: No, I do not think they are, but I would like your lordship to have seen before you become of the very important.

THE COMMISSIONER: What are they?

MR. HYMAN: Part of the building and machinery assets of the Company go to [illegible] amounted to [illegible].

MR. [illegible]: Up to the time of taking the [illegible].

MR. McKAY: Up to the time of taking the [illegible].

MR. HYMAN: Is that the actual cost to the company or the appraised cost?

MR. McKAY: That is the cost.

MR. HYMAN: Does that include the [illegible] and so on?

MR. McKAY: The $2,100,000 and, yes.

MR. HYMAN: Which is [illegible].

MR. McKAY: The appraised replacement value is of those assets as given by the [illegible] amounted to $[illegible].

MR. [illegible]: [illegible]

MR. [illegible]: [illegible]

Company's cost indicated by the o920 appraisal was just under 100%.

(Page 17745 follows)

The company's cost values to 1920 can reasonably be taken to be on a pre-War basis, because during the War it was very difficult to obtain new machinery.

MR. McRUER: Oh--

MR. HEWARD: Just a minute; I have the figures on it. The only machinery, new machinery obtained during the War amounted to less than 5% of these assets; that includes buildings, the only new machinery and buildings. The company's cost values to 1920 can reasonably be taken to be on a pre-War basis because during the War it was very difficult to obtain new machinery. That, I think, has been testified to.

THE COMMISSIONER: Anyhow, you didn't obtain it.

MR. HEWARD: No, except about 5%. If we look at the various increases in values shown between 1915 and 1920 by the three informants mentioned in the table, namely, the Textile World, Lockwood, Green & Co., or Loper, and J.E. Sirrine and Company we find that in every case they show in 1920 a much larger increase over pre-War costs than was shown by the appraisal of 1920. Do you see that, my lord?

THE COMMISSIONER: Yes.

MR. HEWARD: The Textile World shows an increase of 300%, and we only increased slightly under 100%. Lockwoods, Greene & Company showed an increased of 170% --

MR. McRUER: Between what times?

MR. HEWARD: Between 1915 and 1920. You find it on this little table that I have here, the one that is part of the exhibit.

(1940)

The Chairman: [illegible] be [illegible] and accounting be based in so far I understand it, because during the war it was very difficult to obtain new machinery.

Mr. [illegible]: Yes--

Mr. [illegible]: Just a minute; I have the figures on the [illegible] the war [illegible]. Less than 5% of those assets; that includes buildings, the only new machinery and building. The company's cost values to 1941 was reasonably be taken to be on a pre-war basis because during the war it was very difficult to obtain new machinery. That, I think, has been testified to.

The [illegible]: Anyhow, you didn't obtain it.

Mr. [illegible]: No, except about 5%. If we look at the various increases in values shown between 1939 and 1940 by the three industrials mentioned in the [illegible] namely, the Textile Corp., Dominion, Queen & Co., or Dominion, and G.T. Clarke and Company we find that in every case they show in 1940 a much larger increase over pre-war costs than was shown by the equivalent of 1940. Do you see that, Mr. Lamb?

Mr. [illegible]:

Mr. [illegible]: The Textile Corp. shows an increase of 300%, and we only increased slightly under 100%. Dominion, Queens & Company showed an increase of 1400% --

Mr. [illegible]: Between what times?

Mr. [illegible]: [illegible]

MR. McRUER: Yes, but the years covered; it depends on when your costs took place. You did not buy it in 1915, did you?

MR. HEWARD: We bought 95% of it before 1915.

MR. McRUER: Yes.

MR. HEWARD: Alright. Now, Sirrine & Company show an increase of 183% between 1915 and 1920. The lowest figure therefore, namely, that given by Lockwood, Greene & Company is 170% whereas the 1920 Appraisal showed only an increase of slightly less than 100%. It is of course to be expected that the appraisal company's valuation would not reflect the full amount of the rise in value as at 1920 because the appraisal which they were making was intended to be used as a permanent record of values, and would therefore be made on a conservative basis, and would avoid reflecting extreme or sudden rises in values which might be of a temporary nature. That is natural; this was going to be a permanent record for our company for the purpose which it was evidently used, namely, that of reflecting the increase in the operations of the company, and we must not therefore reflect just a temporary fluctuation. Now, as I have pointed out, my lord, the rise in values up to 1920 is shown by each of the three informants to have been much greater than the increase shown by the appraisal made in 1920. Therefore, I submit that the fallacy of the computations on page 177 of the brief, consists in the fact that the Textile World's

Mr. DUNN: Yes, but the years covered; it depends on when your costs took place. You did not buy it in 1915, did you?

Mr. [illegible]: We bought 95% of it before 1915.

Mr. [illegible]: Yes.

Mr. [illegible]: Right. Now, starting a company also on increase of 125% between 1915 and 1920. The lowest figure therefore, namely, that given by [illegible], Greene & Co. only is 170% whereas the 1920 [illegible] [illegible] in [illegible] of [illegible] was than 100%. It is of course to be expected that the operating company's valuation would not reflect the full amount of the rise in value at 1920 because the material which they were making was intended to be used as a permanent record of values, and would therefore be made on a conservative basis, and would not reflecting extreme or sudden rises in values which might be of a temporary nature. That is natural; this was going to be a permanent record for our company for the purpose which it was evidently used, namely, that of reflecting the increase in the operations of the company, and we must not therefore reflect just a temporary [illegible] Now, as I have pointed out, by 1920, the rise in values up to 1920 is shown by each of the three indications to have been much greater than the increase shown in the general made in 1920. Therefore, I submit

See [illegible]

Q. 15,[illegible]

P. 7 [illegible]

7 [illegible]

percentage figures of 40% are applied to the 1920 appraisal figures which shows less than 100% over pre-War values whereas the Textile World showed an increase of 300% and the drop of 40% which it shows was from the high level of 300% over pre-War costs. This drop of 40% they show was from the high level of 300%. Now, to illustrate, my lord --

MR. McRUER: Isn't Mr. Glassco's evidence the increase was 100%?

MR. HEWARD: Pardon?

MR. McRUER: Isn't Mr. Glassco's evidence the increase was 100%?

MR. HEWARD: No, we didn't go as high as that.

MR. McRUER: Oh yes, he did.

MR. HEWARD: In any event we have then -- he gives you some specimen figures there but we have these figures now showing 300 from your own document and 170 from one of our informants and 183 from another of our informants. To illustrate the extent of the margin of error, my lord, inherent in the method adopted on page 177 let us apply the variations in replacement values indicated in the Textile World's letter here to the assets of the Dominion Textile Company. The cost of the assets up to 1920, substantially on the basis -- on a pre-War basis, was $15,517,440. That is the cost new. In 1920, however, the Textile World says that these values had increased by 300%, and would therefore amount to $62,069,760, in 1920. The subsequent decline from this peak would be approximately 40% of this

$62,069,760, or $24,827,904 leaving a value in it --

THE COMMISSIONER: You say a decline of 40% from $62,000,000?

MR. HEWARD: Yes.

THE COMMISSIONER: How much did you say that was?

MR. HEWARD: I am sorry I went too fast. A decline of 40% from $62,069,760 would amount to $24,827,904.

THE COMMISSIONER: Are you taking 40% off of $62,000,000? You would have $32,000,000 left.

MR. HEWARD: Yes, we would have more than that, my lord, 40%, the subsequent decline would be $24,000,000; isn't that right?

THE COMMISSIONER: The amount --

MR. HEWARD: The decline itself.

THE COMMISSIONER: I thought you meant you would have $24,000,000 left.

MR. HEWARD: No, we have a good deal more than that.

THE COMMISSIONER: You have thirty-seven million and something.

MR. HEWARD: So that leaves a value in 1934 of $37,241,856, which is still greater than the cost of the assets to the company by $21,724,416. Now, my lord, the Textile World, as was pointed out, does not give any figures for 1936, but its figures for 1934 show that the values in that year were 137.5% higher than they were in 1915. You see that applied on this table here. As I have just stated the appraisal of 1920 only increased the pre-War values by slightly under 100%; therefore, if in 1934 the

[illegible] $4,847,904 having a value in it --

[illegible]: You say a decline of 40%

from $98,000,000?

Mr. [illegible]: Yes.

5 THE COMMISSIONER: How much did you say that was?

MR. [illegible]: I am sorry I wasn't too fast.

decline of 40% from 98,000,700 would amount to

$58,847,904.

THE COMMISSIONER: Are you taking 40% of

10 98,000,000? You would have $58,000,000 left.

MR. [illegible]: Yes, we would have more than that,

my lord, 40%, the subsequent decline would h-

$58,000,000; isn't that right?

THE COMMISSIONER: The amount --

15 MR. [illegible]: The decline itself.

THE COMMISSIONER: I thought you meant you w-

have $58,000,000 left.

MR. [illegible]: No, we have a good deal more l-

THE COMMISSIONER: You have thirty-seven mil-

20 and something.

MR. [illegible]: So that leaves a value in 1934

of $37,841,000, which is still greater than the cost

of the assets to the company by $21,784,410. Now,

my lord, the textile world, as was pointed out,

25 could not live any figures for 1929, but its figures

for 1930 [illegible] in 1930, it's true, were lo-

higher than they were in 1929. So you [illegible]

on this table here. [illegible] have just stated the

equivalent of 1930 only increased the pre-War values

30 by slightly under 100%; therefore, if in 1934 the

values were greater than the pre-war values by 137.5% the values shown by the 1920 appraisal and even greater values were still there in 1934. That is the conclusion I draw from that computation. Now, the other two authorities do give information as to the 1936 values, and taking the lower of those two, Lockwood, Greene and Company, or if my learned likes it better, Ralph E. Loper and Company, we find the values in 1936 were 107.3% -- you see that on this table, my lord -- 107.3% higher than the values in 1915. Therefore as the 1920 appraisal had only written up the values by slightly less than 100% the information given by these informants indicates the values shown by the 1920 appraisal are still there -- were still there in 1936. I keep forgetting we are now in the 1937 period. They were still there in 1936.

THE COMMISSIONER: I think you better have a rest now.

-- The Commission adjourned for a short recess.

-- On resuming.

MR. HEWARD: I should mention just in passing, my lord, to remind you, that the Dominion Textile Company did not write into their books the full value, the full increase in value shown by the 1920 appraisal.

THE COMMISSIONER: Yes, I know that. You only took $9,837,000.

MR. HEWARD: Yes.

THE COMMISSIONER: Out of ten million.

MR. HEWARD: Ten million odd. So I submit, my

values were greater than the pre-war values by 127, the values shown by the 1920 appraisal and even greater values were still there in 1934. That is the conclusion I draw from that computation. Now, the other two authorities do give information as to the 1935 values, and taking the lower of those two, Lockwood, Greene and Company, or if my learned friend likes it better, Ralph E. Loper and Company, we find the value in 1935 were 107,3% -- you see that on this table, my lord -- 107.3% higher than the values in 1918. Therefore as the 1920 appraisal had only [illegible] values by slightly less than 100% the information [illegible] by these informants indicates the values shown by the 1920 appraisal are still there -- were still there in 1935. I keep forgetting we are now in the last period. They were still there in 1935.

THE COMMISSIONER: I think you better have a rest now.

-- The Commission adjourned for a short recess.

-- On resuming.

MR. MACKAY: I should mention just in passing, my lord, to remind you, that the Dominion Textile Company did not write into their books the full value, the full increase in value shown by the 1920 appraisal.

[illegible] They, I have [illegible] $9,087,000.

[illegible]

THE COMMISSIONER: Out of ten million.

MR. MACKAY: Ten million odd. Yes I admit, my

lord, that the letter from the Textile World and the information obtained from the other two sources indicates that there has been no overdepreciation. It is just possible, my lord, and this is only surmise, of course, that the difference between the present book value and the 1936 insurance appraisal, which you remember was four million dollars, would be accounted for by the extra values quoted by the three informants; that is to say, by the fact that the values quoted by these informants show values which are in excess of the written up values which the company placed on its books as a result of the 1920 appraisal.

THE COMMISSIONER: You mean to say these values they give to us now would bring the total value higher than the 1936 appraisal?

MR. HEWARD: No, my lord, that they would bring -- that the excess values shown by these three informants over what we carry on our books, excess values in machinery new, shows that the extra values which appear between our books and the 1936 insurance appraisal, may be accounted for by the fact that machinery is so much higher than is shown on our books, the value of machinery.

THE COMMISSIONER: That is the difference of four million.

MR. HEWARD: Four million dollars. Your lordship will remember that one of them shows 107% as at 1936, an increase of 107% over 1915 and the other shows 130%, but that is only a surmise, my lord, but it would account for the difference between the insurance

lord, that the letter from the Sentinel and the information obtained from the other two sources indicates that there has been no overdepreciation. It is just possible, my lord, and this is only conjecture of course, that the difference between the present book value and the less insurance appraisal, which [illegible] for by the extra values quoted by the three informants that is to say, by the fact that the values quoted by these informants are values which are in excess of the written up values which the company placed on its books as a result of the 1930 appraisal.

THE COMMISSIONER: You mean to say these values given to us now would bring the total value [illegible] the large appraisal?

MR. [illegible]: No, my lord, that they would [illegible] that these values shown by these informants over which we [illegible] on our books, [illegible] in machinery now, shows that the [illegible] values which [illegible] between our books and the less insurance appraisal, [illegible] accounted for by the [illegible] machinery is [illegible] shown on our books the value of [illegible] machinery [illegible] the value of [illegible] the same of [illegible]

THE COMMISSIONER: Your lordship [illegible] 1930 [illegible] account for the difference between the insurance

appraisal and our book figures.

Now, I submit, my lord, that in another very important respect the computation on page 177 of the brief has proceeded on a fallacious basis and that is in respect to the assets acquired since 1920.

THE COMMISSIONER: Well, for instance, Dominion Cottons.

MR. HEWARD: Yes.

THE COMMISSIONER: And the Sherbrooke Cotton Company.

MR. HEWARD: And the Sherbrooke Cotton Company, and the conditions of buildings, plant and machinery--

THE COMMISSIONER: What is the false basis? .

MR. HEWARD: It is this, my lord, that Commission Counsel in that computation on page 177 has applied depreciation which was written off the cost of these assets against the alleged replacement values new in 1936, which he contends are substantially less than the original cost to the company. It is a fundamental function of depreciation charges to rateably extinguish the cost of fixed assets over their useful life, and therefore depreciation charges must be based upon cost. Now, Commission Counsel has alleged that the replacement values now of the assets acquired since 1920 have fallen by certain stated percentages, in certain cases as much as 40%. The method which he has adopted, however, in his computation is to apply depreciation charges which the company has actually made on the basis of cost against the lower replacement value new which he states results from the alleged drop in prices. He then compares the difference

[illegible]

Now, I submit, my lord, that in neither way important respect the computation on page 177 of the brief has proceeded on a reasonable basis and that is in respect to the basic depreciation since 1926.

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[illegible] well, for insurance, depreciation [illegible].

[illegible]

THE COMMISSIONER: And the Chesterfield Cotton Company [illegible]

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and the credit side of building, plant and machinery.

THE COMMISSIONER: What is the raise basis?

MR. [illegible]: It is this, my lord, that commencing in that computation on page 177 the applied depreciation which was written off the cost of these assets against the allowed replacement values now in 1926, which in contends are substantially less than the original cost to the company. It is a fundamental [illegible]

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the cost of fixed assets over their useful life, and therefore depreciation charges must be based upon cost. Now, Commission Counsel has claimed that the replacement values now of the assets mentioned above 1926 have fallen by certain admitted percentages, in certain cases as much as 42%. The method which has adopted, however, in his computation is to say [illegible]

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[illegible] He then compares the difference

between these two with the amount arrived at from the insurance appraisal.

THE COMMISSIONER: You depreciate on the basis of your cost.

MR. HEWARD: On our cost.

THE COMMISSIONER: Over the probable lifetime of the article.

MR. HEWARD: We depreciate on cost and not on written up value.

MR. McRUER: Not on the written-up value?

MR. HEWARD: No.

MR. McRUER: Is this the written-up value, these buildings that were acquired?

MR. HEWARD: None of these are written up. We depreciate on cost, but you have set these off, these depreciation charges against the reduced values which you say took place as a result of the decline in prices. Perhaps I might explain. I can make this clear; I have used an example, and if I am wrong in my interpretation I can be corrected. The fundamental fallacy, therefore, is that Commission Counsel applies depreciation charges to the replacement value new at the end of the period which produces a result which is entirely meaningless as the depreciation figures are in no way applicable to the replacement value new. You see he takes off from this figure of $24,594,120, he takes off depreciation of seventeen million odd. Perhaps I can make this clear by using an example, my lord, in round figures for easier

between these two with the amount arrived at from the insurance company.

THE PRESIDENT: You depreciate on the basis of your cost.

Mr. [illegible]: Yes.

THE PRESIDENT: Over the probable lifetime of the article.

Mr. [illegible]: We depreciate on cost and not on written up value.

Mr. [illegible]: Not on the written-up value?

Mr. [illegible]: No.

Mr. [illegible]: Is this the written-up value, these buildings that were acquired?

Mr. [illegible]: Some of these are written up.

We depreciate on cost, but you have not these out. These depreciation charges against the reduced value which you say took place as a result of the decline in prices. Perhaps I might explain. I can make this clear; I have used an example, and if I am wrong in my interpretation I can be corrected. The [illegible] fallacy, therefore, is that depreciation charged against the replacement value now at the end of the period which increases a fixed [illegible] is entirely meaningless as the depreciation charge is in no way applicable to the replacement value now. You see he takes off from this figure of $24,394,130, he takes off depreciation on a very great million odd. Perhaps I can make this clear by using an example, my lord, in round figures for easy

calculation. In 1921 I buy some new machinery for $10,000,000 which has a useful life, we will say, of 30 years. The proper rate of depreciation, therefore, will be at the rate of 3-1/3% per annum upon the cost. By that time I will have wiped out the entire cost. By 1936, 15 years later, I will therefore have charged to depreciation 15 years at 3-1/3%, or exactly 50% of the original cost. Do you follow me, my lord?

THE COMMISSIONER: Yes.

MR. HEWARD: Leaving a depreciated cost of $5,000,000.

THE COMMISSIONER: That is the depreciated cost.

MR. HEWARD: The depreciated cost.

THE COMMISSIONER: That is not necessarily the value.

MR. HEWARD: No, the depreciated cost. That means that the depreciation charged in the 15 years has been $5,000,000 as against $10,000,000, the original cost, because I have just depreciated 50% at the rate of 3-1/3% per annum. Now, my learned friend, in this tabulation says the values on machinery of this kind have dropped 40% in the fifteen year interval. Therefore the replacement value new of your machinery would now be only $6,000,000, but you have written $5,000,000 of depreciation. I therefore, says he, apply that $5,000,000 to the replacement value new, namely $6,000,000, which leaves $1,000,000. He then compares the resultant figure with the appraisal made in 1936, which appraisal on the basis of the replacement value new of $6,000,000 and 50% of the useful life gone,

depreciation. In 1921 I buy some new machinery for $10,000,000 which has a useful life, we will say, of 30 years. The annual rate of depreciation, therefore will be at the rate of 3-1/3% per annum upon the cost. At that time I will have wiped out the entire cost. By 1936, 15 years later, I will therefore have charged to depreciation 15 years at 3-1/3%, or exactly 50% of the original cost. Do you follow me, Mr. Lamb?

Mr. Lamb: Yes.

Mr. Brydie: Leaving a depreciated cost of $5,000,000.

Mr. Lamb: That is the depreciated cost.

Mr. Brydie: The depreciated cost.

Mr. Lamb: That is not necessarily the value.

Mr. Brydie: No, the depreciated cost. That represents the depreciation charged in the 15 years from $5,000,000 as against $10,000,000, the original cost, because I have then depreciated 50% at the rate of 3-1/3% per annum. Now, my learned friend, in this renewal fund have the idea on a minimum of 50% that have dropped off in the different year intervals. Therefore the replacement value per of your machinery now is only $5,000,000, but you have written $5,000,000 of depreciation. I therefore, says he, apply that $5,000,000 to the replacement value per, namely $6,000,000, which leaves $1,000,000. He then compares the results figure with the amortized made in 1926, which appraised on the basis of the replacement value new of $6,000,000 and 50% of the useful life gone,

would amount to $3,000,000. And in comparing this $3,000,000 with the $1,000,000 arrived at by the method above described he gets what he claims is $2,000,000 of overdepreciation, whereas the depreciation had not been sufficient to take care of the drop in values because my unextinguished book cost of the machinery which I bought in 1921 is still $5,000,000, and the replacement value, according to the appraisal is $3,000,000. So, my lord, I say it is fallacious, therefore, to apply these depreciation figures to the written down values. Then, I would like to examine, if I may, this computation on page 177 from still another point of view. On that page it is argued that between 1920 and 1936 $15,179,238 comprised undisclosed profits arising from overdepreciation. You will find that statement -- I have read that before, my lord. The table on page 177 states that the depreciation charged during the period 1920 to 1936, including betterments and repairs and everything else amounted to $17,875,243.

MR. McRUER: That does not include betterments and repairs.

THE COMMISSIONER: It is a different figure.

MR. McRUER: That is the actual depreciation written off.

MR. HEWARD: $17,875,--

MR. McRUER: --243.

MR. HEWARD: On page 178--

THE COMMISSIONER: He says that is the aggregate of

would amount to $5,000,000. and in a year's time $4,000,000 with the $1,000,000 received at by the method and above described be gets what he claims is $3,000,000 of overdepreciation, whereas the depreciation had not been sufficient to take care of the drop in values because my uncertificated book cost of the machinery which I bought in 1921 is still $5,000,000, and the replacement value, according to the appraisal is $3,000,000. So, my lord, I say it is fallacious, therefore, to apply those depreciation figures to the written down values. Then, I would like to examine, if my, this complete item on page 177 from still another point of view. On that page it is agreed that [illegible] profits arising from overdepreciation. You will find that statement -- I have read that before, my lord. The table on page 177 shows that the depreciation charged during the period 1910 to 1928, including betterments and repairs and everything else amounted to $17,872,840.

Mr. McLean: It does not include betterments and repairs.

The CHAIRMAN: It is a different figure.

Mr. McLean: That is the actual depreciation method.

Mr. HAY, K.C.: $17,872,--

Mr. McLean: --840.

The CHAIRMAN: Go ahead.

Mr. HAY, K.C.: So says that is the average of

the amounts you actually charged.

MR. HEWARD: Yes, that is what he says. That is all I am saying.

MR. McRUER: You said including betterments and repairs. Betterments and repairs -- the $10,000,000 is down below.

MR. HEWARD: Alright then, depreciation, perfectly good for my purposes, $17,875,243.

THE COMMISSIONER: That is what you did actually depreciate.

MR. HEWARD: I thought that included the other, but I see I was wrong.

THE COMMISSIONER: That is what I thought a while ago, you remember.

MR. HEWARD: And lower down on that same page-- so he says we have charged depreciation of $17,875,243, and lower down --

THE COMMISSIONER: That is one fact you both agree on.

MR. HEWARD: Absolutely; I am just quoting from his table.

THE COMMISSIONER: What comes next?

MR. HEWARD: Then he says as a result of his computation on that page $15,179,238 would appear to be undisclosed profits arising during the period 1920 to 1936 created by overdepreciation and betterments charged to profits which is equivalent to overdepreciation. If this is correct it means that this amount of $15,179,238 consists of over-

the answers are usually phrased.

Mr. [illegible]: Yes, that is what he says. That is [illegible] in detail.

Mr. [illegible]: You said including betterments and repairs. Betterments and repairs -- the $16,000,000 is gross value.

Mr. [illegible]: [illegible], [illegible], [illegible] used for my purposes, $17,875,815.

THE COMMISSIONER: That is what you did actually [illegible].

Mr. [illegible]: I thought that included the other, but I see I was wrong.

THE COMMISSIONER: That is what I thought a while ago, you remember.

Mr. [illegible]: And lower down on that same page--so he says we have chargeable depreciation of $17,875,845, and lower down --

THE COMMISSIONER: That is one fact you both agree on.

Mr. [illegible]: Absolutely; I am just quoting from his table.

THE COMMISSIONER: What comes next?

Mr. [illegible]: Then he says as a result of his computation on that page $16,170,808 would appear to be undisclosed profits earned during the period 1920 to 1925 created by overdepreciation and [illegible] charged to profits which is equivalent to [illegible]. If this is correct it means that there [illegible] $16,170,808 [illegible]

depreciation, or depreciation which should not have been charged.

MR. McRUER: Or over charges to betterments and repairs or over charges to equipment.

MR. HEWARD: Yes, and this would mean of the total depreciation which it was alleged was charged, being $17,875,243, only $2,696,005 was properly chargeable.

MR. McRUER: No, no. There is $29,000,000 goes into that category right at the foot of page 177.

MR. HEWARD: Just a minute; my contention is he said $15,000,000 was over-depreciation --

MR. McRUER: No, no.

THE COMMISSIONER: He carries it down further.

MR. McRUER: The amount was created by over-depreciation, betterments and repairs charged to profits during this period. How I don't know. I don't know whether you have reconstructed your plant, had repairs and put it back just where it was and charged depreciation at the same time. It is all in whichever way you did. But you cannot single out one year.

MR. HEWARD: There is no suggestion in this period from 1920 to 1936 that any betterments have been improperly charged, no suggestion other than this.

MR. McRUER: Well, the total is thirty million that has been charged to profits.

MR. HEWARD: That includes repairs and equipment charges?

MR. McRUER: Yes.

MR. HEWARD: Oh yes, but there has been no indication

of any kind that during that period this company has improperly included betterments among these repairs.

MR. McRUER: Oh yes.

MR. HEWARD: Where is the evidence?

MR. McRUER: Mr. Howson's evidence; I will deal with it in reply, abundance of it.

MR. HEWARD: I don't think so. The situation is this that we have this depreciation of $17,875,243 which he says we charged as depreciation and then he says that you have improperly charged fifteen million so that would leave us only $2,696,005 properly chargeable as depreciation during the 16 year period, and that is equivalent to an annual charge for depreciation in the 16 year period of $168,500.

THE COMMISSIONER: I don't think you are making the right deduction from the whole of his figures. You see, Mr. Heward, you appear to have charged for depreciation, repairs, betterments and new equipment $30,059,262. Now, Mr. McRuerx says that out of that or in that there is seventeen million and some hundred thousand dollars that you have put there --

MR. HEWARD: No, he says there is only fifteen million.

THE COMMISSIONER: Do you bring it down to fifteen million? Exhibit 917 puts it at seventeen million.

MR. HEWARD: That is for the 31 year period.

THE COMMISSIONER: That is right, that is my mis-

[illegible]

[illegible]

[illegible]

take. It is a different period. It is fifteen million for this period.

MR. HEWARD: I am always stumbling over that seventeen million figure too.

THE COMMISSIONER: It is $15,179,238; that is the net result of all these figures, you see, that is over charged.

MR. McRUER: From 1920 to 1936.

THE COMMISSIONER: You get that by taking into account not only the seventeen million, Mr. Heward. It takes into account not only the seventeen million, but it takes into account the seventeen million and the ten million for repairs and betterments and the two million for equipment charges.

MR. HEWARD: My lord, the seventeen million is what we depreciated, and there is no indication so far in the evidence that during the years 1920 to 1936 there were betterments improperly charged to operations, and, of course, equipment charges.

THE COMMISSIONER: I understand Mr. Howson's evidence is that there was.

MR.HEWARD: I do not remember his evidence in regard to that.

THE COMMISSIONER: I do not remember it either.

MR.HEWARD: I remember my learned friend reporting about the period prior to that that the directors had said there was, and reporting in the period prior to that that betterments were charged to repairs, but I do not remember any evidence in regard

to this, and Mr. Howson could not tell Mr. Geoffrion in cross-examination how much, if any, he alleged was charged, betterments charged to repairs. So if that be the case then out of our seventeen million of depreciation we are told that only $2,600,000 was properly chargeable, and that would amount to about--

THE COMMISSIONER: I don't think that is a proper statement of what Mr. McRuer charges.

MR. HEWARD: Well, my lord, I may have misunderstood this table.

THE COMMISSIONER: Does he not say that for the period now under review your over charge is fifteen million some hundred thousand dollars on account of excessive depreciation, repairs, betterments and new equipment; isn't that right?

MR. McRUER: Yes, it is summarized in this way. We say you have kept your plant right up to standard. Here it is and at the same time you have depreciated it on your books and you have charged to depreciation these amounts. Now, you can say it is overdepreciation or it is charging capital expenditures to repairs, but whatever it is there are the profits that have kept your plant right in first class order, and that this is the value at which it is appraised and you have depreciated it at the same time out of profits. So you cannot have your cake and eat it. There it is.

MR. HEWARD: I think the whole thing sizes up to this, my lord. I don't think my learned friend can base an argument in this regard on the statement

to this, and Mr. Hanson could not tell her. Depreciation in gross-consideration how much, if any, he alleged was urged, betterments charged to repairs. So if that be the case then out of our seventeen million of depreciation we are told that only $4,000,000 was properly chargeable, and that would account to a

THE COMMISSIONER: I don't think that is a proper statement of what Mr. Mahon changes.

Mr. HANSON: Well, my lord, I may have misunderstood that.

THE COMMISSIONER: Does he not say that for the period not under review your over charge is fifteen million some hundred thousand dollars on account of excessive depreciation, repairs, betterments and new equipment; isn't that right?

MR. HANSON: Yes, it is somewhat in this way. He says you have kept your plant right up to standard. Here it is and at the same time you have depreciated it on your books and you have charged to depreciation those amounts. Now, you can say it is overcapacity or it is charging capital expenditures to repairs, but whatever it is these are the profits that have kept your plant right in first class order, and that this is the value at which it is capitalized and you have depreciated it at the same time out of profits. So you cannot have your cake and eat it. There is a

Mr. [illegible]: I think the whole thing rises on this, my lord. I don't think my learned friend can base an argument in this regard on the statement

that our repair account or our equipment account -- and I am going to deal with equipment particularly in a minute -- that our repair account or equipment account were improperly charged to operations without proving very definitely that it was, and he has not proved anything of that kind. But he makes this statement and then tacks on the repairs and betterments and equipment charges, but, as a matter of fact, all that we have wrote off for depreciation is $17,000,000 and if you deduct the $15,000,000 which he says is overdepreciation, or improper charges to profits for betterments, if you deduct that and accept that there has been no proof of improper charges to betterments then I say the depreciation amounts to only $2,696,005 and on that basis that would be about $168,500 per year, and the annual average value of the buildings, plant and machinery, excluding land, during the sixteen year pe iod was $19,953,040.50 so that the depreciation which Commission Counsel contends is proper depreciation would be .845 of one per cent per annum.

I think the whole point, perhaps the whole difference between my learned friend and myself is that I do not admit, and I claim it has not been proved, that we have charged any betterments to repairs -- improperly charged any repairs to operations or any equipment to operations, and that we did charge betterments to repairs only in the early period before we had any depreciation, and charged in lieu of depreciation.

that our repair account or our equipment account -- and I am going to deal with equipment particularly in a minute -- that our repair account or equipment account were improperly charged to operations without proving very definitely that it was, and he has not proved anything of that kind. But he makes this statement and then bases on the repairs and betterments and equipment charges, but, as a matter of fact, all that we have wrote off for depreciation is $17,000,000 and if you deduct the $13,000,000 which he says is overcapitalization, or improper charges to profits for betterments, if you deduct that and assert that there has been no proof of improper charges to betterments then I say the depreciation amount to only $4,096,000 and on that basis there would be about $128,000 per year, and the annual average value of the buildings, plant and machinery, excluding land, during the sixteen year period was $15,983,040.00 so that the depreciation [illegible] contends is more or less similar would be .80 of one per cent per annum.

I think the whole point, perhaps the whole difference between my learned friend and myself is that I do not admit, and I claim it has not been proved, that we have charged any betterments to repairs -- improperly charged any repairs to operations or any equipment to operations, and that we did charge betterments to repairs only in the early period before we had any depreciation, and charged in lieu of depreciation.

THE COMMISSIONER: What exhibit contains these various columns?

MR. HEWARD: Page 252, my lord, of Mr. McRuer's brief.

THE COMMISSIONER: Is it right there?

MR. HEWARD: Page 252 -- column in regard to repairs?

THE COMMISSIONER: Yes.

MR. HEWARD: Mr. McRuer's brief, page 252.

THE COMMISSIONER: Now, are these headings Mr. McRuer's headings or are they found in your books?

MR. HEWARD: These are Mr. McRuer's figures.

MR. McRUER: Well, the headings are our headings, partly our headings.

MR. HEWARD: He has compiled them.

MR. McRUER: Undoubtedly, but, for instance, charges to operations for repairs and betterments --

MR. HEWARD: The heading there on column four is not our heading, charges to operations for repairs and betterments. There is no such heading of ours.

MR. McRUER: No, you have different accounts, but in your minute book we find these charges that are shown there described exactly in that way. For instance, 1906, that year we have charged --

MR. HEWARD: Only prior to 1918.

MR. McRUER: Yes, and then I pointed out when you start setting up depreciation which you say took the place of betterments and repairs, instead of the charges for betterments and repairs disappearing they

increased.

MR. HEWARD: So did the size of our mills.

MR.McRUER: Did your mills increase from 108,000 in 1916 -- did they jump four times, to 412,000?

MR. HEWARD: I will answer that in a moment.

MR. McRUER: During the war there was no increase in the mills. We just had that a little while ago, and then we have 1919, we have three charges straight across the line, depreciation $881,000, betterments and repairs $494,000, charges to operations for reserve for depreciation of obsolescent plant, $438,000.

THE COMMISSIONER: Let me see whether I can find out where you disagree. Take any one of those years. Take 1918. You have here $560,000--

MR. HEWARD: Of course, we are dealing with 1936.

THE COMMISSIONER: Yes, quite right; take 1930. You have $554,051.86 which Mr. McRuer says you have charged to operations for repairs and betterments. Now, did you charge any -- is any of that represented by betterments, for instance?

MR. HEWARD: We contend we did not.

THE COMMISSIONER: You say it was all repairs?

MR. HEWARD: All repairs, yes.

MR.McRUER: Depreciation that year $1,272,000; then charges for equipment $236,000.

MR. HEWARD: Equipment is a perfectly good charge, my lord.

MR. McRUER: It may be, but it would not -- it is

the way these charges multiply as the columns multiply. No one column decreases, but they all increase.

MR. HEWARD: Now, to proceed and perhaps tie up that last argument. I was giving you the average annual value of the cost of the buildings, plant and machinery, excluding lands, during the 16 year period and it was $19,953,040.50.

THE COMMISSIONER: Yes, the average annual value.

MR. HEWARD: The average annual value.

THE COMMISSIONER: Of the whole thing?

MR. HEWARD: In the 17 year period between 1920 and 1936. I called it a 16 year period but it is a 17 year period. So that the depreciation which Commission Counsel contends -- assuming that I am right that there has been no charges for betterments to repairs, no improper charges in that period then --

THE COMMISSIONER: No betterments paid for out of operations.

MR. HEWARD: Out of operations; assuming that our contention in that is right them Commission Counsel's contention is that proper depreciation would be only .845 of one per cent per annum because the depreciation which we charged was $2,696,000, or what he would allow us to charge during that year, and that is equivalent to saying that the average useful life of the plant, buildings and machinery would be 118 years.

MR. McRUER: Well, that is not my argument; that is taking half of my argument.

these charges multiply as the columns multiply. No one column decreases, but they all increase.

Mr. Hanna: Now, to proceed and perhaps tie up that last argument. I was giving you the average annual value of the cost of the buildings, plant and machinery, excluding lands, during the 16 year period and it was $15,352,000.00.

The Commissioner: Yes, the average annual value.

Mr. Hanna: The average annual value.

The Commissioner: Yes.

Mr. Hanna: In the 17 year period between 1920 and 1936. I called it a 16 year period but it is a 17 year period. So that the depreciation which [illegible] -- according to [illegible] right that there has been no charge for betterments to repairs, no improper charges in that period then

The Commissioner: No betterments paid for out of [illegible].

Mr. Hanna: Out of operations; assuming that our contention in that is right then Commission assumes a contention is that proper depreciation would be only .045 of one per cent per annum because the depreciation which we charged was $6,000,000, so what is really allow us to charge during that year, and that is equivalent to saying that the average useful life of the plant, buildings and machinery would be 1[illegible] years.

Mr. Hanna: Well, that is not my argument; that is taking half of my argument.

THE COMMISSIONER: He says that figure is there on account of what you did otherwise.

MR. HEWARD: If my learned friend is right that we have been improperly charging capital direct to repairs in regard to this period it must be remembered this is the period where income tax has been in force, and our books have been subject to careful scrutiny by them and I should think they would have found out and made careful inquiries if they had seen any unreasonable charges to operations or any indication of it.

MR. McRUER: That would mean a very detailed study of your books. For instance, when you put on a new roof do you expect the income tax department to go and find out whether that was a repair or a replacement?

MR. GORDON: It is in their interests to do so.

MR.HEWARD: Now, my lord, I am going to jump to another period.

THE COMMISSIONER: I guess you better jump to next Monday.

-- The Commission adjourned at 4.30 p.m. to resume at 10.30 a.m., Monday, March 8th, 1937.

THE COMMISSIONER: He says that figure is there on account of what you did otherwise.

MR. HEWARD: If my learned friend is right that we have been improperly charging capital direct to repairs in regard to this period it must be remembered this is the period where income tax has been in force, and our books have been subject to careful scrutiny by them and I should think they would have found out and made careful inquiries if they had seen any unreasonable charges to operations or any indication of it.

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